

**European Master's Degree in  
Human Rights and Democratisation**

Master's Thesis

**Welcome to the Golden Land:  
Sexual and Gender-Based Violence against  
Women Refugees from Burma**

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## **ABSTRACT**

“Welcome to the Golden Land” is the phrase which greets visitors arriving at the International Airport of Rangoon, the capital of Burma. A country of extreme richness from the cultural and environmental points of view, Burma, now officially called Myanmar, is a paradise for tourists, being one of the last countries of Asia still offering an insight of traditional Indochina. But many tourists maybe are unaware that the country could preserve its typical oriental charm as a consequence of the isolation policy established by one of the worst and longest lasting military dictatorships in the world.

In the present work it will be shown how the high incidence of Sexual and Gender-Based Violence (SGBV) in Burma is one of the leading factors determining the flight of hundreds of thousands of women into Thailand and how the Thai Government policy towards refugees from Burma does not provide them with adequate protection, but, on the contrary, often exposes them to further violations of their basic rights.

The importance of the accession of Thailand to the United Nations Convention on the Status of Refugees in order to increase the safety of women crossing the border to seek protection from the repression of the Burmese army will be highlighted. This step should be further strengthened by the elaboration of a refugee status determination policy which takes into account SGBV as a ground to grant asylum. Besides, the Burmese junta should hand over the government to a truly democratic administration which should elaborate effective projects aimed at enhancing gender equality within the country.

It is further underlined the importance of the involvement of the international community in the effort to stop the massive violations of women’s rights enacted in an environment of total impunity by the military junta which has been ruling Burma since the 1960s.

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## List of Abbreviations

CEDAW: Convention for the Elimination of Every form of Discrimination Against Women

IDPs: Internally Displaced Persons

KNU: Karen National Union

MI: Military Intelligence

MSA: Multi-Sectoral Approach

NGO: Non-Governmental Organization

NLD: National League for Democracy

PAB: Provincial Admission Board

POC: Person of Concern

RTG: Royal Thai Government

SGBV: Sexual and Gender-Based Violence

SHRF: Shan Human Rights Foundation

SLORC: State Law and Order Restoration Council

SPDC: State Peace and Development Council

SSA: Shan State Army

SWAN: Shan Women's Action Network

TBBC: Thai-Burma Border Consortium

UNHCR: United Nations High Commissioner for Refugees

UWSP: United Wa State Party

WCRWC: Women's Commission for Refugee Women and Children

WLB: Women League of Burma

## INTRODUCTION

“Welcome to the Golden Land” is the phrase which greets visitors arriving at the International Airport of Rangoon, the capital of Burma. A country of extreme richness from the cultural and environmental points of view, Burma, now officially called Myanmar, is a paradise for tourists, being one of the last countries of Asia still offering an insight of traditional Indochina. But many tourists maybe are unaware that the country could preserve its typical oriental charm as a consequence of the isolation policy established by one of the worst and longest lasting military dictatorships in the world.

Its landscape dotted with hundreds of golden pagodas, has been the theatre of a bloody decades-long civil war between the central government and ethnic insurgents which has resulted in the displacement of hundreds of thousands of civilians forced to flee from the draconian strategy of repression enacted from the army ruling the country. Refugees from Burma crossed the borders of all the neighbouring countries, but the largest number sought refuge in Thailand.

As in every ethnic conflict, civilians are the main target of the atrocities committed by both the regular army and the insurgents following a pattern common in other civil wars, women are extremely vulnerable and subjected to countless violations of their basic rights, ranging from the widespread use of rape as a strategy of ethnic cleansing, to the denial of their economic, social and cultural rights, to the obligation to serve as porters for the army and forced labourers for infrastructural projects. These gross violations of women’s rights and the conditions in which the civilian population of Burma is obliged to live are attested to by many reports elaborated by local and international NGOs and are well-known to the United Nations, even if the situation of the country has been discussed only once, thus far, in front of the Security Council.

The conditions of women refugees from Burma in Thailand are characterised by an ongoing situation of vulnerability deriving in part from the attitude of the Thai government towards people searching for refuge in its territory. Thailand, in fact, is not party to the United Nations Convention on the Status of Refugees or to its 1967 Protocol; therefore the majority of persons who have been obliged to cross the border by the repression suffered within Burma is considered to be illegally present in the country, and thus face a high risk of forced repatriation or other violations of their basic rights.

The particular risks characterizing the life of displaced women have been subjected to increasing attention by international organizations since the 1980s: UNHCR issued numerous documents aimed at improving the livelihood of women refugees by establishing tools for their protection from the different forms of sexual and gender-based violence to which they can be subjected

during every phase of the displacement cycle. Notwithstanding the clear engagement of UNHCR and other relief agencies with regard to the rights of displaced women, their conditions world-wide still give reasons of worry, in particular in the non-Convention environments such as Thailand and all the countries bordering with Burma.

The aim of the present work is to give an overview of the conditions of women refugees from Burma in Thailand and of the main reasons pushing them to flee from their home country. The main purpose is to demonstrate the responsibility of the Burmese junta in the widespread and systematic violation of women's rights, which directly contradicts its official position according to which women in Burma fully enjoy their rights and are not subjected to any form of violence. In addition, the policy of the Thai government towards refugees will be analysed in order to highlight its consequences on women refugees and its inconsistency with the norms of customary international law, in particular the principle of *non-refoulement*. The reason why the analysis is going to be based exclusively on Thailand is the large number of persons that, fleeing from the Burmese military regime, looked for refuge in this particular country.

The present paper is divided into two parts: while the first part aims at giving an overview of international refugee law and the framework elaborated in order to increase the protection accorded to women refugees, the second part focuses on an analysis of the conditions of women in Burma prior to their flight into Thailand and then in displaced settings in the host country. Due to the recent implementation of projects specifically aimed at enhancing women refugees' livelihood in Thailand, it is impossible in the present work to evaluate their impact; nevertheless, this paper provides the necessary analytical instruments to assess their future consequences and shows at least a theoretical consistency between the policies and guidelines elaborated by UNHCR and the projects developed within the refugee communities of Thailand.

## **PART 1: THE OPERATIONAL FRAMEWORK**



## ***Refugees without a Camp***

*The regime's soldiers advance.*

*They kill our animals, take our rice.*

*From our schools they take the learning and light.*

*They burn our villages and steal our minds.*

*We hear the soldiers' voice, and we are filled with fear and hate.*

*And we must run, run, run, until our legs break,*

*Refugees without a home, without a camp.*

*They dress our Buddhas in women's underwear.*

*We see our people floating bloated in the river.*

*We have land but cannot farm it, forced labour is our lot.*

*"Peace, peace, peace", they say. Burma says we are at peace.*

*But we are not. We hear gunshots night and day.*

*And we must run, run, run, until our legs break,*

*Refugees without a home, without a camp.*

*Some Shan live in Thailand, work as servants or as slaves,*

*Some live in relocation camps, without money, food, or hope.*

*Some live in the jungle and hear their dying child's cries,*

*Mosquitoes on their limbs, and leeches in their eyes.*

*They dig a shallow grave and place the child inside,*

*And then they must run, run, run, until their legs break,*

*Refugees without a home, without a camp.*

- From The Shan Women's Action Network, "Shan Refugees: Dispelling the Myths", original Shan language poem by Lenghsim (hsenhoe), English adaptation by Bernice Koehler Johnson-

# CHAPTER 1: REFUGEE LAW AND INTERNATIONAL PROTECTION

## **1. *The Institutional Framework of Refugee Law: from the League of Nations to UNHCR***

Although the term “refugee” has been used for centuries to describe any situation in which a person had to flee his or her country of origin, it was only during the 20<sup>th</sup> century that a particular legal system aimed at dealing with people seeking protection in a State other than that of their nationality or habitual place of residence was developed.<sup>1</sup>

Under the auspices of the League of Nations, different multilateral treaties dealing with specific groups of refugees were drafted with the aim of defining their legal status.<sup>2</sup> A binding convention on the International Status of Refugees was drafted in 1933, but its application was limited to the refugees already existing at that moment, thus, when the political situation prior to the Second World War in Germany determined the flight of many opponents to the regime, a new specific treaty had to be elaborated.

It was only with the creation of the United Nations that the international community decided to approach the refugee problem as a whole.<sup>3</sup> In 1947 the responsibility of the refugees defined by the multilateral treaties signed under the League of Nations and of wartime displaced persons was assigned to the Preparatory Commission for the International Refugee Organisation, replaced in 1948 by a temporary agency, the International Refugee Organisation.<sup>4</sup> In December 1949 a Resolution of the United Nations General Assembly decided the creation of a High Commissioner’s Office for Refugees, which Statute was approved by resolution one year after.

According to the Statute, The United Nations High Commissioner for Refugees (UNHCR), which started its activities in January 1951,<sup>5</sup> has the main duty of providing international protection to

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<sup>1</sup> Jahn Ebehard, *Refugees*, in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam, North Holland, vol. IV, 2000, p. 72.

<sup>2</sup> The first of such treaties was signed in 1922 and was related to the status of Russian and Armenian refugees, and was followed by others dealing with Assyrian, Chaldean, Kurdish and Turkish refugees (1928) and with refugees from Germany in 1938; *ibidem*, pp. 72-73; Guy S. Goodwin-Gill, *The Refugee in International Law*, Guildford, Oxford University Press, 1996, pp. 5-7.

<sup>3</sup> Jahn Ebehard, *Refugees*, *cit.*, p. 72.

<sup>4</sup> Atle Grahl-Madsen, *Refugees, United Nations High Commissioner*, in R. Bernhardt (ed.), *Encyclopedia of Public International Law*, Amsterdam, North Holland, vol. IV, 2000, p. 78.

<sup>5</sup> *Ibidem*.

and seeking permanent solutions for refugees.<sup>6</sup> The Statute brought under the responsibility of the new agency those refugees whose status had been determined by the pre-war multilateral treaties, the ones resulting from events which occurred before the 1<sup>st</sup> of January 1951 and, finally, any other person that, based on a well-founded fear of persecution on grounds of race, religion, nationality or political opinion, was unable or unwilling to be protected by his or her country of nationality or, if stateless, of habitual residence.<sup>7</sup>

In December 1950 the United Nations General Assembly also decided to convene a conference to draft and sign a Convention on the Status of Refugees (hereinafter the 1951 Convention).<sup>8</sup> The 1951 Convention's definition of a refugee echoes the one given by the UNHCR Statute, but adds the membership of a particular social group as grounds for persecution. Moreover, apart from the temporary limitation already contained in the Statute, the States participating in the conference had the possibility of geographically limiting the scope of application of the Convention to refugees resulting from events occurring in Europe prior to January 1951.<sup>9</sup> While the time-limit was later eliminated by the 1967 Protocol relating to the Status of Refugees (hereinafter the 1967 Protocol),<sup>10</sup> the possibility of limiting the geographic application of the 1951 Convention was maintained. In addition to defining the concept of refugee, the 1951 Convention established some minimum standards for the treatment of persons falling into the category: the content of these standards will be analysed later in this chapter.

As of March 2006, the States parties to the Convention amounted to 143, being the most recent accession the one of Afghanistan in August 2005. The States parties to the 1967 Protocol amounted to 143, while the ones parties to both documents were 140.<sup>11</sup>

As stated above, one of the main competences of UNHCR is to protect refugees as defined by its Statute, a definition that is the same, with the differences above-mentioned, as that provided by Article 1A(2) of the 1951 Convention. In reality nowadays UNHCR's competences encompass several activities not included in its Statute, and include beneficiaries that do not fall under the narrow legal category of refugee established both by the Statute and the Convention, who are defined with the

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<sup>6</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 7.

<sup>7</sup> UNGA res. 428 (V) of 14 December 1950, *ibidem*, pp. 384-389.

<sup>8</sup> UNGA res. 429 (V) of 14 December 1950.

<sup>9</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p.19.

<sup>10</sup> The 1967 Protocol is an independent juridical instrument and states can decide to ratify it without ratifying the 1951 Convention: in this case, states only have to apply arts. 2 to 34 of the 1951 Convention to refugees as defined by art. 1, but without the time-limit; *ibidem*, p. 298.

<sup>11</sup> UNHCR, *States Parties to the 1951 Convention Related to the Status of Refugees and the 1967 Protocol*, at [www.unhcr.org/states\\_parties](http://www.unhcr.org/states_parties).

somewhat vague term of “persons of concern to UNHCR”.<sup>12</sup> These enlargements are based on special authorisations issued by the United Nations General Assembly, the Economic and Social Council and the Secretary General, and give UNHCR the necessary flexibility to deal with refugee crisis all over the world.<sup>13</sup>

To understand the extent to which UNHCR’s competences, in particular in terms of persons under its protection, have developed, it is useful to refer to the data presented in the “2004 Global Refugee Trends” report issued by the agency in July 2005.<sup>14</sup> By the end of 2004, the total population of concern to UNHCR<sup>15</sup> amounted to 19.2 million. Considering that in the same period the total world refugee population amounted to 9.2 million, 54% of which is assisted by UNHCR,<sup>16</sup> these data indicate that the agency deals on a growing scale with beneficiaries not falling under the Statute’s or the Convention’s definition. Even if the largest category of persons (more than 9 million) assisted by UNHCR is still comprised by refugees,<sup>17</sup> a great amount of it consists of “other persons of concern”, in particular the internally displaced (almost 5.5 million).<sup>18</sup>

Furthermore, in particular starting from the refugee crisis of the 1990s, increasing importance has been given to the assistance role of UNHCR. The programmes of the agency were thus “[...] extended beyond local integration, employment and self-sufficiency projects, to cover returnees and the internally displaced.”<sup>19</sup>

This short overview of the development of the institutional framework dealing with refugees at the international level gives an idea of the complexity of the refugee phenomenon; it is now necessary to more deeply analyse the definition of refugee provided by the main international instruments on the subject and the standards that should be applied to people fulfilling the criteria contained by this definition.

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<sup>12</sup> Atle Grahl-Madsen, *Refugees...*, cit., p. 82.

<sup>13</sup> Ibidem.

<sup>14</sup> Population and Geographical Data Section Division of Operational Support UNHCR Geneva, *2004 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum-Seekers, Statelessness and Other Persons of Concern to UNHCR*, July 2005, at [www.UNHCR.org/STATISTICS](http://www.UNHCR.org/STATISTICS).

<sup>15</sup> The total population of concern to UNHCR includes refugees, asylum-seekers, returnees, internally displaced persons (IDPs), returned IDPs, and stateless persons; ibidem, paragraph 3.

<sup>16</sup> Ibidem, paragraphs. 3-5.

<sup>17</sup> Defined as “persons recognized as refugees under the 1951 UN Convention/1967 Protocol, the 1969 OAU Convention, in accordance with the UNHCR Statute, persons granted a humanitarian status and those granted temporary protection”, ibidem, Table 1, footnote 2.

<sup>18</sup> Ibidem, Table 1.

<sup>19</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p.218.

## 2. Who is a Refugee?

The definition of refugee is given by Article 1A(2) of the 1951 Convention. According to this article, the term refugee applies to any person who “[...] owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country [...]”.<sup>20</sup>

It follows that, first, a refugee must be outside of his or her country of nationality or habitual residence;<sup>21</sup> and, in addition, this person has to be unwilling or unable to be protected by his or her country of origin due to a well-founded fear of persecution. It must be noted that the relation between being outside one’s country of origin and fearing persecution is not a causal one: a refugee can be abroad for reasons not related to persecution, for instance for holidays, and make a claim for asylum because of a change in his or her country during his or her absence, and have a well-founded fear of being persecuted upon return.<sup>22</sup>

The element of fear is very difficult to assess as it is a subjective element and requires an analysis of the likeliness of a future risk.<sup>23</sup> For this reason it is of paramount importance while evaluating a refugee claim to take into account the overall conditions in the claimant’s country of origin. With regard to persecution, its meaning and contents are defined neither by the 1951 Convention, nor by any other international instrument.<sup>24</sup> Of course its core content encompasses threats to life and restrictions to freedom when based on the five grounds listed by Article 1A(2), but “[...] a wide margin of appreciation is left to States in interpreting this fundamental term, and practice reveals no coherent or consistent jurisprudence.”<sup>25</sup> Less serious measures likely to affect a claimant, such as, for example, restrictions to freedom of speech or economic disadvantages, can amount to persecution according to the assessment of different factors, in particular the severity of the measures and the relevance of the rights affected by them.<sup>26</sup>

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<sup>20</sup> If stateless, this person has to be unwilling or unable to avail himself of the protection of the country of habitual residence; see 1951 Convention, art. 1 A (2).

<sup>21</sup> The essential role played by the border-crossing in the definition of refugee can be considered also as a direct consequence of the centrality of States in international law; see Catherine Phuong, *The International Protection of Internally Displaced Persons*, Cambridge, Cambridge University Press, 2004, p. 22.

<sup>22</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 40.

<sup>23</sup> Ibidem, p. 41.

<sup>24</sup> Ibidem, p. 66; see also Atle Grahl-Madsen, *Refugees...*, cit., p. 80.

<sup>25</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 67.

<sup>26</sup> Ibidem, p. 68.

There is a clear link between protection, or lack of protection, and persecution. It is in fact self-evident that a lack of protection increases the likeliness of persecution. This link acquires particular importance when the persecution is not enacted by state agents, but by entities that the State is not able to control or whose activities it tolerates. In these cases it is more difficult for the claimant to establish the likeliness of persecution and its nature<sup>27</sup> and the determination of the absence of protection by the State acquires a central importance.

At any rate, for a claimant to be considered as a refugee, the persecution must be based on the grounds listed in Article 1A(2), all of which are linked to the application of the principle of non-discrimination, as it has developed in general international law and in many human rights instruments.<sup>28</sup>

The ground of “membership of a particular social group” is particularly interesting. As stated earlier, this reason leading to persecution is not part of the definition of refugee provided by the UNHCR Statute; considering the historical moment in which the Convention was drafted, it is possible that the delegates decided to include it considering the persecutions that persons belonging to the “capitalist class” were suffering in socialist countries.<sup>29</sup> The rationale to single out a particular group is the identification of characteristics belonging to an individual at birth (such as gender) as well as others deriving from an individual’s choices (for example his or her economic activity). The potentiality of the ground of membership in a particular social group lies in its “[...] element of open-endedness potentially capable of expansion in favour of a variety of different classes susceptible to persecution.”<sup>30</sup>

States party to the 1951 Convention and the 1967 Protocol are in charge of assessing the existence of the aforementioned elements when determining the status of an applicant: in the case the claimant fulfils the criteria listed by Article 1A(2) of the Convention, he or she will be considered as a “Convention refugee”; at the other end, UNHCR has the responsibility of assessing the status considering not only the definition contained by its Statute, but also the United Nations General Assembly resolutions, which have contributed to a relevant increase in the number of persons of concern to the agency. In this case the applicant would be considered a “mandate refugee”. What is important to emphasize is that when an individual makes a claim for refugee status in a country which is not party to the Convention or the Protocol he or she can still be defined as a mandate refugee if his

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<sup>27</sup> Ibidem, pp. 70-73.

<sup>28</sup> Ibidem, pp. 43, 68.

<sup>29</sup> Ibidem, p. 46.

<sup>30</sup> Ibidem, p. 48.

or her conditions fulfil the requirements of UNHCR's Statute or if a resolution of the General Assembly is relevant for the case.<sup>31</sup>

The overlapping of the narrow conventional definition and the enlargement of the number of mandate refugees gives States the possibility of restricting their responsibilities in the face of a refugee crisis. It is particularly difficult, for example, to distinguish between people fleeing persecution from others forced to leave their country because of major economic crisis. This situation can often result in the denial of protection for groups in need of it.<sup>32</sup>

Further problems are created by mass internal displacements: not having crossed a border, Internally Displaced Persons (IDPs) do not fulfil one of the basic requirements of the refugee definition given by the Convention. Nevertheless, IDPs, whose protection should be granted by their State of origin,<sup>33</sup> are often in even worse conditions than refugees-proper. UNHCR started dealing with the problem of IDPs in 1972 in relation to Sudan;<sup>34</sup> in 1992 the United Nations Secretary General appointed a Special Representative on IDPs, who issued his first report in 1993.<sup>35</sup> In any case, the international community still deals with IDPs on a case-by-case base and doubts about the necessity of their definition as a specific legal category have been expressed both by scholars as well as humanitarian organizations.<sup>36</sup>

To conclude, it is interesting to notice that the enlargement of the refugee definition resulting from the General Assembly resolutions has been echoed by regional instruments, in particular the 1984 Cartagena Declaration in Latin America and the 1969 Convention on the Specific Aspects of Refugee Problems in Africa drafted under the auspices of the Organization of African Unity. Both regional instruments were developed in areas highly affected by mass exodus and, as a consequence, include the

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<sup>31</sup> Ibidem, pp. 32-33.

<sup>32</sup> Atle Grahl-Madsen, *Refugees...*, cit., p. 80.

<sup>33</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 264.

<sup>34</sup> Ibidem; see also Nils, Geissler, *The International Protection of Internally Displaced Persons*, in *International Journal of Refugee Law*, vol. 11, 1999, p. 453.

<sup>35</sup> *Comprehensive Study on the Human Rights Issues relating to Internally Displaced Persons*, UN doc. E/CN.4/1993/35; the definition of IDPs given by the Special Representative Mr. Deng in his first report was "persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters; and who are within the territory of their own country", cited in Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 265.

<sup>36</sup> The main argument is that the creation of a new legal category is not needed since IDPs should be protected under humanitarian and human rights law; for an overview of this subject see Nils Geissler, *The International Protection of Internally Displaced Persons*, in "International Journal of Refugee Law", vol. 11, 1999, pp. 457-458; for the problems arising in elaborating a legal definition of IDPs, see Catherine Phuong, *The International Protection...*, cit., pp. 22-28.

flight from situations of generalized violence, such as internal conflicts or mass violation of human rights, within the grounds for determining refugee status.<sup>37</sup>

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<sup>37</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 20-21; see art. 1.2, Organization of African Unity, 1969 Convention on the Specific Aspects of Refugee Problems in Africa, and paragraph III.3, 1984 Cartagena Declaration on Refugees; interestingly, the definitions of IDPs reflect the ones of refugees given by these two regional instruments, see Nils Geissler, *The International Protection...*, cit., p. 453.



### 3. What Does Being a Refugee Mean?

The rights to which refugees are entitled in the host country are listed in the 1951 Convention. The minimum standard required by the Convention is that the treatment of refugees equals the one accorded to aliens.<sup>38</sup> In relation to the right of association, the right to work, the right to a shelter and the right to secondary education, the Convention requires States to apply the most favourable treatment applied to foreigners under same circumstances,<sup>39</sup> while for other rights<sup>40</sup> States should grant refugees the same treatment as nationals.

In addition to the standards applicable to refugees considered as aliens in an unusual status, others must be applied to refugees as such. Apart from the articles that attempt to limit the application of exceptional measures to refugees as a consequence of their nationality and regulate the extent of the limitations to the right to freedom of movement,<sup>41</sup> articles providing for rights to which refugees as such are entitled can be divided between those “[...] under which States parties agree to provide certain facilities to refugees; and secondly, those by which States have undertaken to recognize and protect certain ‘rights’ on behalf of refugees.”<sup>42</sup> While the first category is mostly related to administrative measures host States are supposed to take to improve refugees’ day-to-day life, such as the issuing of documents and the facilitation of naturalization,<sup>43</sup> the second is composed of provisions addressing one of the main challenges a refugee has to face: repatriation against his or her will. In this regard, Articles 31 on the illegal entry in a country, 32 on the limitations to expulsion, and 33 on the principle of *non-refoulement* are particularly relevant.

The aim of Article 31 is to draw a line between refugees illegally entering or already present in a country and illegal immigrants *tout court*, stating that, if refugees are fleeing from a country out of fear of persecution, they shouldn’t be subjected to penalties arising from their illegal entry “[...] provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”<sup>44</sup> This article is of paramount importance considering that very often refugees do not have the possibility of exhausting the administrative measures required to legally enter the host

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<sup>38</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 299.

<sup>39</sup> See 1951 Convention, arts. 15 and 17.1, 21, 22.2.

<sup>40</sup> See 1951 Convention, arts. 4 (religion), 14 (artistic rights and industrial property), 16 (access to court and legal assistance), 20 (rationing), 22.1 (primary education), 23 (public relief), 24.1 (social security), 29 (fiscal charges).

<sup>41</sup> See 1951 Convention, arts 8, 9 and 26; these provisions have been particularly subjected to reservations since strictly related to considerations of national security as explained in Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 299-301.

<sup>42</sup> Ibidem, p. 301.

<sup>43</sup> See 1951 Convention, arts. 25 (administrative assistance), 27 (identity documents), 28 (travel documents), 30 (transfer of assets) and 34 (facilitation of naturalization).

<sup>44</sup> 1951 Convention, art. 31.1.

State that could therefore consider them “illegal immigrants” and apply the relevant provisions of the case. At any rate Article 31 states neither the obligation of granting refuge, nor the prohibition to temporary restrictions of movement.<sup>45</sup>

Expulsion of a lawful refugee is ruled by Article 32, according to which such a refugee cannot be expelled unless it is demonstrated through a due process of law that he or she constitutes a serious threat to national security. Article 32.3 goes further by stating that the State should grant to a refugee pending expulsion a reasonable period of time to find another host country.<sup>46</sup> The problem that may arise from this article is that, if a refugee is considered a danger for the current host country, the possibility of finding another State willing to grant asylum can prove to be very difficult; at the same time, a refugee cannot be repatriated to his or her country of origin if the reasons which determined the flight are still present.<sup>47</sup>

Article 33 of the 1951 Convention deals with *non-refoulement*, one of the fundamental principles undergirding refugee law. The origins of this principle can be traced to the 19<sup>th</sup> century, even if it was only the 1933 Convention on the International Status of Refugees that ultimately included it in a binding international instrument.<sup>48</sup> The principle of *non-refoulement* prohibits the summary return of refugees to any State where they would be at risk of persecution. Its distinguishing element is the informality of the procedure of return, which differentiates it from “[...] expulsion or deportation, the more formal process whereby a lawfully resident alien may be required to leave a State, or be forcibly removed.”<sup>49</sup> From the phrasing of article 33.1, it clearly states that the principle applies to every refugee, irrespective of the formal definition of his or her status;<sup>50</sup> nevertheless, *refoulement* is accepted *ex* article 33.2 in cases in which a refugee can be reasonably regarded as “[...] a danger to the security of the country in which he is, or who, having been convicted by final judgement of a particular serious crime, constitutes a danger to the community of that country.”<sup>51</sup> The second paragraph of Article 33

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<sup>45</sup> Restrictions on movements are allowed while the decision on the status of the person illegally entering the country is pending; moreover, art. 31.2 specifies that a refugee must be granted a sufficient time to find refuge in another country; see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 152-153, 305-306; as it will be analysed in the second part of the present work, the consideration of refugees as illegal immigrants is very common in non-Convention environments as it is the case in Thailand.

<sup>46</sup> Art. 32.3 gives the right to States to “[...] apply during that period such internal measures as they may deem necessary”.

<sup>47</sup> In this case in fact the State would breach the principle of non-refoulement, see below; on expulsion of lawful refugees, see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 151-152, 306-307.

<sup>48</sup> Ibidem, pp. 117-121.

<sup>49</sup> Ibidem, p. 117.

<sup>50</sup> This means that if a person is defined as a “mandate” refugee or a Person of Concern to UNHCR, the principle of non-refoulement has to be respected by the host country: this remark is particularly important in the case of Thailand that will be analysed in the second part of the present work.

<sup>51</sup> 1951 Convention, art. 33.2.

allows States a margin of appreciation in the determination of the concepts of danger for national security or serious crime. In any case, States must apply the principle of proportionality, assessing the seriousness of the threat constituted by the refugee in relation to the consequences of his or her return to a possibly unsafe country.<sup>52</sup>

The principle of *non-refoulement* can be considered part of customary law, thus also binding States not parties to the 1951 Convention.<sup>53</sup> The evidence of the inclusion of the principle in the corpus of international general law is given by States' practice, together with the one of international organizations.<sup>54</sup> Furthermore, *non-refoulement* has been included in many international treaties and documents not exclusively or directly related to refugees, both at universal and regional levels, such as the United Nations Convention against Torture.<sup>55</sup> When States express doubts on the legal binding value of the principle, it is usually in relation to mass influxes of refugees that could undermine their national security; nevertheless, these situations can be considered as falling under the exceptions to the principle.<sup>56</sup>

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<sup>52</sup> Ibidem, pp. 139-141.

<sup>53</sup> See, for example, the paper prepared in occasion of the 50th anniversary of the 1951 Convention by the UNHCR Department of International Protection, *The 1951 Convention Relating to the Status of Refugee and its 1967 Protocol: Signing On Could Make the Difference*, 2001, p. 7, at [www.unhcr.org](http://www.unhcr.org).

<sup>54</sup> As Goodwin-Gill points out, UN General Assembly resolutions adopting UNHCR's reports are taken by consensus, which, while denoting "[...] the absence of formal dissent, it still allows States the opportunity to express views in debate and in summary records", but no objection, either formal or informal, on *non-refoulement* has ever been expressed; see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 167-168.

<sup>55</sup> See 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3.

<sup>56</sup> Guy S. Goodwin-Gill, *The Refugee...*, cit., p. 169.

#### 4. The Protection of Refugees: Asylum and Temporary Solutions

The formal protection granted to a refugee in a host country is usually defined as “asylum”. The core content of this concept can be considered to be the long-term “[...] protection granted to a foreign national against the exercise of jurisdiction by another State [...]”,<sup>57</sup> usually characterised by the admission to residence. It must be noted that no international instrument imposes on States an obligation to grant asylum:<sup>58</sup> notwithstanding the inclusion of article 14.1 in the Universal Declaration of Human Rights of 1948, which states that “[e]veryone has the right to seek and enjoy in other countries asylum from persecution,”<sup>59</sup> no further steps were undergone by States to give a legally binding value to the principle enshrined by the 1948 Declaration.

The 1967 UN General Assembly Declaration on Territorial Asylum for example, stresses that the decision to grant asylum is inherent to States’ sovereignty and that the burden of a refugee crisis has to be shared by the entire international community.<sup>60</sup> On the other hand, the 1977 United Nations Conference on Territorial Asylum did not reach any relevant conclusion.<sup>61</sup> Generally speaking, States refuse to be bound by a legal obligation to grant asylum, even to accept the existence of a humanitarian practice of granting protection to refugees. Furthermore, the concept of asylum intended as protection and the principle of *non-refoulement* are clearly linked: States cannot prohibit the entry of refugees, but this does not mean that they are obliged to provide long-term solutions for all refugees entering their territory.

The problems related to the granting of asylum are particularly evident in correspondence to mass influxes. In these contingencies, States feel endangered by the impact massive movements across borders can have on their internal stability, in particular when refuge seekers do not belong to the same ethnic group as the majority of the population. Moreover, large-scale displacements usually take place in areas characterised by a combination of lack of stability and underdevelopment.<sup>62</sup>

In conditions of mass displacements of a population across borders it is thus very difficult for States to grant durable solutions, particularly in the form of asylum. The 1951 Convention was

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<sup>57</sup> Ibidem, p. 173.

<sup>58</sup> Ibidem, p. 174.

<sup>59</sup> 1948 Universal Declaration of Human Rights, art. 14.1.

<sup>60</sup> UNGA res. 2312(XXII), 14 December 1967; see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 175-176.

<sup>61</sup> Ibidem, p. 181.

<sup>62</sup> Even if it is not possible to single out a pattern of causes leading to mass displacements since every situation is characterized by peculiarities flowing from the political, social and economic background of a country, very often large-scale exoduses are produced by civil war or ethnic conflicts, as, for example, in the cases of Sri Lanka, Bangladesh, Sudan, Rwanda, former Yugoslavia, Guatemala, etc.; for an overview see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 174-195.

elaborated with the individual refugee in mind,<sup>63</sup> but the many humanitarian crises of the last fifty years have shown that it is very difficult to apply the concept of asylum as conceived in the 1950s.

In order to overcome the above-mentioned difficulties, States started the practice of granting asylum on a temporary basis. The concept of temporary refuge, as defined by different international instruments starting from the 1980s,<sup>64</sup> flows from the principles of *non-refoulement* and of international solidarity: States are obliged to allow refugees to cross borders and receive protection against persecution under the principle of *non-refoulement*, but the responsibilities related to their long-term protection lie with the entire international community. It can be maintained that “[...] in admitting large numbers of persons in need of protection and in scrupulously observing *non-refoulement*, the State of first admission can be seen as acting on behalf of the international community.”<sup>65</sup>

States of first asylum agree on the admission of large groups of refugees on a temporary basis relying on the assistance of the international community to arrange durable solutions. These durable solutions change according to the peculiar characteristics of each different mass displacement and range from resettlement in a third country to repatriation: in Europe, for example, during the conflict in the former Yugoslavia, temporary protection was granted pending return in the country of origin, while in South East Asia in the period of mass displacements of population from Viet Nam and Cambodia, refugees were allowed entry until a third country agreed on their resettlement.<sup>66</sup> Whatever the durable solution, refugees are always entitled to the application of minimum standards of protection while in the country of first asylum.

Temporary refuge or protection constitutes a flexible instrument to face humanitarian crisis and provides “[...] the necessary theoretical nexus between the admission of refugees and the attainment of lasting solutions.”<sup>67</sup>

Among refugees there are some categories whose protection poses peculiar challenges to the international community: women refugees undoubtedly belong to a particularly vulnerable category within displaced persons; this is why several documents dealing with their needs have been elaborated since the 1980s. The study of these documents is the subject of next chapter.

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<sup>63</sup> Ibidem, p. 196.

<sup>64</sup> Ibidem, p. 198.

<sup>65</sup> Ibidem, p. 202.

<sup>66</sup> Another difference is that while in Europe refugees were allowed entry in the country, in South East Asia they were concentrated in camps whose maintenance was provided by Western donors; ibidem, pp. 199-200.

<sup>67</sup> Ibidem, p. 200.

## CHAPTER 2: DEFINING SEXUAL AND GENDER-BASED VIOLENCE AGAINST WOMEN REFUGEES

### 1. *Gender and Sex: Two Different Concepts*

The concept of gender is not always used in the proper way, and is often considered just as a synonym of sex. In reality, the two terms not only have different meanings, but also different connotations.

Sex refers to the biological characteristics of men and women, mainly with regard to the differences in their reproductive functions. Gender refers to the social characteristics that are attached to the sexes, including expectations for the proper behaviour of men and women within societies. There is no unique definition of gender, since the roles attached to men and women change according to different factors, including the social environment, the ethnic origins, and the historical period. Therefore, gender is not an invariable concept, but a learned construction which can be changed.<sup>68</sup>

It is fundamental to grasp the concept of gender in order to have a precise understanding of gender-based violence and its root causes. When employing the term gender in fact, both women and men are included in the discussion. Even if women are usually the main targets of acts of gender-violence perpetrated by men, men can suffer forms of violence based on gender too, as, for example, forced conscription in the armed forces.<sup>69</sup>

This chapter aims at giving an overview of sexual and gender-based violence with a specific attention to episodes occurring in refugee settings, and a particular focus on sexual violence because of its major consequences on the wellbeing of refugee communities.

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<sup>68</sup> For definitions of gender see for example Women's Commission for Refugee Women and Children, *Masculinities: Male Roles and Male Involvement in the Promotion of Gender Equality A Resource Packet*, September 2005, p. 4, at [www.womenscommission.org/pdf/masc\\_res.pdf](http://www.womenscommission.org/pdf/masc_res.pdf); UNHCR, *Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, May 2003, p. 11, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>69</sup> Jeanne Ward, *Gender-Based Violence among Conflict-affected Populations: Humanitarian Program Responses*, in H. Durham and T. Gurd (eds.), *Listening to the Silences: Women and War*, Leiden, Martinus Nijhoff Publishers, 2005, p. 69.

## **2. Typologies of Sexual and Gender-Based Violence against Women**

Although men can suffer from Sexual and Gender-Based Violence (SGBV), women are usually the main victims/survivors<sup>70</sup> of this kind of violation of basic human rights. “Women around the world are usually in a disadvantaged position compared to men of the same social and economic level. Gender roles and identities usually involve inequality and power imbalance between women and men. Violence against women, and its acceptance within society and cultures, is one of the manifestations of this inequality and power imbalance.”<sup>71</sup>

This power imbalance between genders can be considered one of the main causes of SGBV directed against women. The same interpretation is given by the United Nations Declaration on the Elimination of Violence against Women approved by the General Assembly in 1993.<sup>72</sup> According to the Declaration, violence against women encompasses “[...]any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”<sup>73</sup> Article 2 of the Declaration provides a list of acts of violence against women, at the same time underlining that they can be perpetrated at different levels: within the family, in the community and by the State.<sup>74</sup>

SGBV encompasses, but is not limited to, acts of sexual violence. In fact, it can be noted that the use of the term Sexual and Gender-Based Violence can be somehow misleading since it explicitly contains a reference to sexual violence which is only one of the types of gender-based violence. For this reason some international humanitarian agencies, as, for example, the Reproductive Health Response in Conflict Consortium, prefer to use the term Gender-Based Violence (GBV) in order to encompass in programmes operating under this label the social context in which acts of violence against women occur, in particular by including men in every step of projects aimed at the reduction of

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<sup>70</sup> A note on terminology: “The term survivor is used to refer to individuals who are victims of sexual and gender based violence. For legal settings, the term ‘victim’ may be appropriate and required to conform to applicable laws. In non-legal settings, however, being a ‘victim’ connotes powerlessness and stigmatization which is to be avoided by all concerned parties”; see UNHCR, *Inter-Agency Lessons Learned Conference Proceedings*..., cit., p. III.

<sup>71</sup> UNHCR, *Sexual and Gender-Based Violence*..., cit., p. 12.

<sup>72</sup> Declaration on the Elimination of Violence against Women, GA Res. 48/104 of 20 December 1993, A/RES/48/104: “[...] violence against women is a manifestation of historically unequal power relations between women and men which have led to the domination over and the discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial mechanisms by which women are forced into subordinate position compared with men.”

<sup>73</sup> Ibidem, article 1.

<sup>74</sup> The State can be involved both with the direct participation of its agents and by a lack of action to prevent and respond to acts of violence targeting women; see also UNHCR, *Sexual and Gender-Based Violence*..., cit., p. 19.

this phenomenon.<sup>75</sup> Notwithstanding the above, the term that will be used in this work is Sexual and Gender-Based Violence in order to reflect the terminology used by UNHCR and other major humanitarian agencies.

According to UNHCR's categorization, the main forms of SGBV can be grouped into five typologies:

- sexual violence, including rape, attempted rape, sexual exploitation and sexual harassment;
- physical violence, which also encompasses trafficking;<sup>76</sup>
- emotional and psychological violence;
- harmful traditional practices, in particular Female Genital Mutilation (FGM), early and/or forced marriages, honour killings, infanticide and denial of education for girls;
- and socio-economic violence, consisting in acts denying women the enjoyment of basic economic and social rights, for example through discriminatory laws.<sup>77</sup>

Notwithstanding the gravity of all of the above-mentioned acts of SGBV, a deeper understanding of sexual violence is merited for two main reasons: its effects on the survivor and on her community are particularly severe; and the evolution of its consideration by the international community gives a clear example of one of the main problems characterizing the overall approach to violence against women, that is the dichotomy between the “private” and the “public” spheres.

Sexual violence can be defined as every act implying physical or psychological violence directed against the sexual characteristics of an individual or linked to the sphere of sexuality.<sup>78</sup> Rape is the most common crime of sexual violence, but within this category it is also possible to include sexual constriction, consisting of forcing the victim/survivor to perform sexual acts with another person,<sup>79</sup> sexual mutilation, sexual slavery and forced pregnancy. Despite the numerous cases in which rape and other forms of sexual violence have been used during armed conflicts, the international community has

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<sup>75</sup> Jeanne Ward, *Gender-Based Violence among Conflict-affected Populations...*, cit., p. 68-69.

<sup>76</sup> “‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.” United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, U.N. Doc. A/55/383, 2000, Article 3(a).

<sup>77</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit., p. 16-18.

<sup>78</sup> Gay J. McDougall, *Contemporary Forms of Slavery. Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflicts*, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1998/13, June 1998, paragraph 21.

<sup>79</sup> See the Judgement of the International Criminal Court for the Former Yugoslavia on the case “Sikirica and others (Keraterm)”, IT-95-8, November 2001, in which this crime is recognised for the first time.



been silent on the issue for a long time, with the only references to these crimes limited to the prohibition of crimes against “honour”.<sup>80</sup> Sexual violence has for a long time been considered as belonging to the “private” sphere of individuals, in which the State does not have to be involved, as well as being an unavoidable consequence of armed conflicts.

An important change in the international community’s approach to sexual violence was brought about by the jurisprudence of the two ad hoc criminal courts created by the Security Council to judge the perpetrators of the atrocities committed during the ethnic conflicts in the former Yugoslavia and Rwanda: thanks to their jurisprudence, a clear juridical definition of rape was elaborated for the first time at the international level;<sup>81</sup> further, the activity of both tribunals showed that sexual violence during conflicts not only is an avoidable phenomenon, but it constitutes a weapon used by combatants to morally and physically undermine the members of the opposing faction. Moreover, the role of these two tribunals is undeniable in the inclusion in the Statute of the International Criminal Court of a detailed list of sexual crimes within the acts amounting to crimes against humanity.<sup>82</sup>

A wide range of consequences can be singled out with regard to every form of SGBV. Effects are usually more visible in cases of violent acts such as rape or other forms of sexual and non-sexual physical violence; this, in any case, does not mean that less evident outcomes of SGBV, such as an increase in the survivors’ sense of insecurity and isolation, do not bring about severe and long-term negative results: “[v]ictims/survivors of sexual and gender-based violence are at high risk of severe health and psycho-social problems, sometimes leading to death, even in the absence of physical assault.”<sup>83</sup> The social stigma attached to the survivors of SGBV, in particular of sexual violence, has,

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<sup>80</sup> See, for example, article 27 of the Fourth Geneva Convention; for a brief exam of the use of the term honour in International Humanitarian Law, see Charlotte Lindsey, *The Impact of Armed Conflict on Women*, in H. Durham and T. Gurd (eds.), *Listening to the Silences: Women and War*, Leiden, Martinus Nijhoff Publishers, 2005, p. 32-33.

<sup>81</sup> In the Akayesu case (ICTR-96-4), rape was defined as “[...] a physical invasion of a sexual nature, committed on a person under circumstances that are coercive”, see paragraphs 597-599 of the Judgement issued on the 2<sup>nd</sup> of September 1998; the elements of this definition were further specified by the International Criminal Tribunal for the former Yugoslavia in the Judgement rendered by the Court on the 10<sup>th</sup> of December 1998 in the Furundzija case (IT-95-17/1-PT) where, in paragraph 185, the following definition of rape was given: “(i) the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator; (ii) by coercion or force or the threat of force against the victim or a third person.” These sentences can be read at [www.icttr.org](http://www.icttr.org) (International Criminal Tribunal for Rwanda) and [www.un.org/icty](http://www.un.org/icty) (International Criminal Tribunal for the former Yugoslavia); for an overview of the judgements rendered by the two tribunals on cases of sexual violence see Kelly D. Askin, *Sexual Violence in Decisions and Indictment of the Yugoslav and Rwandan Tribunals: Current Status*, in “American Journal of International Law”, vol. 93, 1999; see also Hannah Pearce, *An Examination of the International Understanding of Political Rape and the Significance of Labelling it Torture*, in “International Journal of Refugee Law”, vol. 14, no. 4, 2003, p. 542-547.

<sup>82</sup> On the gender provisions of the Rome Statute see Barbara Bedont, *Gender Specific Provisions in the Statute of the International Criminal Court*, in F. Lattanzi and W. Shabas (eds), *Essays on the Rome Statute of the International Criminal Court*, Ripa Fagnano Alto, Editrice il Sirente Piccola Societa’ Cooperativa, vol. 1, 1999.

<sup>83</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit., p. 23.

for instance, consequences which are not limited to the direct target, but encompass the entire community since the survivor's increased isolation can bring to the loss of his or her social function. In the case of female survivors, this often means that duties traditionally belonging to them, such as child-care and food gathering and preparation, are no longer going to be performed resulting in self-evident consequences on the wellbeing of their families. Health problems arising from SGBV have an even clearer effect on the entire community, since chronic health consequences impact negatively on the contribution of the survivors to the development of his or her community and on the sustainability of the health care system.<sup>84</sup>

With regard to the several forms of SGBV to which women can be subjected in the different moments of their lives, it can be useful to report the table elaborated by L. Heise and included in many documents addressing SGBV against women:

**Gender Violence throughout a Woman's Life<sup>85</sup>**

Phase	Type of Violence Present
Pre-birth	Sex-selective abortion; battering during pregnancy; coerced pregnancy.
Infancy	Female infanticide; emotional and physical abuse; differential access to food and medical care.
Girlhood	Child marriage; genital mutilation; sexual abuse by family members and strangers; differential access to food, medical care and education.
Adolescence	Violence during courtship; economically coerced sex (e.g. for school fees); sexual abuse in the workplace; rape; sexual harassment; arranged marriage; trafficking.
Reproductive age	Physical, psychological and sexual abuse by intimate male partners and relatives; forced pregnancies by partner; sexual abuse in the workplace; sexual harassment; rape; abuse of widows, including property grabbing and sexual cleansing practices.
Elderly	Abuse of widows, including property grabbing; accusations of witchcraft; physical and psychological violence by younger family members; differential access to food and medical care.

As it is highlighted by the table, women can suffer from SGBV in different forms during every period of their lives. It is also important to underline that episodes of SGBV against women happen in every country of the world, cross-cutting social classes and ethnic groups.

It has already been said that the imbalance in the power relation between genders can be considered as the root cause of SGBV; nonetheless, the incidence of this phenomenon can increase

<sup>84</sup> Ibidem, p. 23-24; see also UNFPA, *Violence against Women Fact Sheet*, at [www.unfpa.org/swp/2005/presskit/factsheets/facts\\_vaw.htm](http://www.unfpa.org/swp/2005/presskit/factsheets/facts_vaw.htm).

<sup>85</sup> Table developed by L. Heise, from UNHCR, *Sexual and Gender-Based Violence...* (hereinafter "SGBV Guidelines"), cit., p. 20.

when other factors likely to foster an exacerbation of violent behaviours, such as wars, are present. Further elements that can increase the risk for women of being subjected to SGBV are, among others, the existence of traditional legal systems discriminating against women, the economic dependence of women from male relatives, and mental or physical disabilities of the possible target of acts of violence.<sup>86</sup> Clearly enough, all these factors can have an increased impact in situations in which the traditional social system aimed at protecting women and female-children is undermined, as it is the case during displacement. The analysis of SGBV in refugee settings, of its causes and, in particular, of the possible solutions proposed by UNHCR in its “Sexual and Gender-Based Violence against Refugees, Returnees and Internally Displaced: Guidelines for Prevention and Response” is the subject of the following section.

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<sup>86</sup> Ibidem, p. 22.

### **3. UNHCR's Guidelines for Prevention of and Response to Sexual and Gender-Based Violence in Refugee Settings.**

Many aspects of SGBV affecting women refugees have been already addressed in the previous section; nevertheless, since the conditions characterizing displacement are peculiar and can expose women to further risks, it is worth examining the leading document issued by UNHCR aimed at addressing the threats to the safety and wellbeing of women refugees.

UNHCR issued the first “Sexual Violence: Guidelines for Prevention and Response” in 1995. These first Guidelines were mainly focused on the analysis of rape and only briefly addressed problems such as harmful traditional practices and domestic violence. Another shortcoming was the absence of clear indications on how field workers should act in order to limit the incidence of SGBV in refugee settings. Further, the 1995 Guidelines left a vacuum regarding which sector of the agency was to be in charge of organizing specific activities to address the phenomenon.<sup>87</sup> The 1995 Guidelines were then revised based on the Inter-Agency Lessons Learned Conference of March 2001,<sup>88</sup> which highlighted the above-mentioned limitations, and issued in May 2003.

The revised Guidelines give an initial overview of the phenomenon of SGBV, highlighting its typologies, causes and consequences. Echoing the table elaborated by Heise<sup>89</sup> on the forms of SGBV women can be subjected to during their life-cycle, Susan J. Purdin developed a table summarizing the forms of violence women refugees can suffer during the refugee-cycle:

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<sup>87</sup> Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection: an Assessment of Ten Years of Implementation*, May 2002, p. 70-71, at [www.womenscommission.org/pdf/unhcr.pdf](http://www.womenscommission.org/pdf/unhcr.pdf).

<sup>88</sup> UNHCR, *Inter-Agency Lessons Learned Conference Proceedings: Prevention and Response to Sexual and Gender Based Violence in Refugee Situations*, March 2001, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>89</sup> See above, Chapter 3.2, p. 28.

## Sexual and Gender-Based Violence during the Refugee Cycle<sup>90</sup>

Phase	Type of Violence
During conflict, Prior to flight	Abuse by persons in power; sexual bartering of women; sexual assault, rape, abduction by armed members of parties in conflict, including security forces; mass rape and forced pregnancies.
During flight	Sexual attack by bandits, border guards, pirates; capture for trafficking by smugglers, slave traders.
In the country of asylum	Sexual attack, coercion, extortion by persons in authority; sexual abuse of separated children in foster care; domestic violence; sexual assault when in transit facilities, collecting wood, water, etc.; sex for survival/forced prostitution; sexual exploitation of persons seeking legal status in asylum country or access to assistance and resources, resumption of harmful traditional practices.
During repatriation	Sexual abuse of women and children who have been separated from their families; sexual abuse by persons in power; sexual attacks, rape by bandits, border guards, forced/coerced repatriation.
During reintegration	Sexual abuse against returnees as a form of retribution; sexual extortion in order to regularise legal status, exclusion from decision-making processes; denial of or obstructed access to resources, right to individual documentation and right to recover/own property.

As clearly shown in this table, women refugees are highly exposed to the risk of being subjected to SGBV during all the phases composing the refugee-cycle. The factors contributing to this increased likelihood for women refugees to be victims/survivors of SGBV episodes lie on the peculiar characteristics of displaced settings and can be summarised as follows:

- Collapse of social and family support structures;
- Geographical location and local environment (high crime area);
- Design and social structure of camp (overcrowded, multi-household, dwellings, communal shelter);
- Design of services and facilities;
- Predominantly male camp leadership (and its gender-biased decisions);
- Unavailability of food, fuel, income generation, leading to movement in isolated areas;
- Lack of police protection;
- Lack of UNHCR/NGO presence in camp;
- Lack of security patrols;
- Lack of individual registration and identity cards;
- Hostility of local population (refugees are considered materially privileged).<sup>91</sup>

<sup>90</sup> Table developed by S. Purdin, from UNHCR, *Sexual and Gender-Based Violence...*, cit., p. 20.

<sup>91</sup> Ibidem, p. 22.

The SGBV Guidelines, as revised following the inputs resulting from the Inter-Agency Lessons Learned Conference, are mainly focused on providing the staff of both UNHCR and its implementing partners with practical tools to both prevent and respond to SGBV in refugee settings.

A very important aspect of the Guidelines is the focus on the “Multi-Sectoral Approach” (MSA), defined as “[...] the framework upon which actions to prevent and respond to sexual and gender-based violence are built.”<sup>92</sup> The MSA aims at creating the conditions enabling the different sectors encompassed in every activity of protection, namely health, psycho-social, legal and safety/security, to work together in addressing SGBV. Within the framework provided by MSA, all relevant actors have to be involved, with a clear emphasis on the participation of the refugee community itself. More specifically, the male leadership of the communities has to take a primary role in promoting activities of prevention of and response to SGBV, since without its involvement changes in the general attitude of the population cannot be achieved. The involvement of adolescents is as well considered crucial in order to “[...] change attitudes and assumptions that may underlie sexual and gender-based violence.”<sup>93</sup> Besides the direct involvement of the beneficiaries, MSA also highlights the need of cooperating with other United Nations agencies, NGOs, the host Government and the host community.<sup>94</sup>

With regard to the activities of prevention, emphasis is put on the importance of singling-out the root causes of SGBV through an assessment addressing the cultural traditions and norms of both the refugee and host communities, the places or moments in which refugees are more exposed to episodes of SGBV and the organizations setting up SGBV projects in all the sectors critical to protection activities.<sup>95</sup> Prevention must focus on five main objectives, each achievable through specific strategies: the change of socio-cultural norms, through, among other things, the promotion of campaigns aimed at informing the refugee community of the consequences of SGBV and programmes for the empowerment of women and girls; the reconstruction of family and community networks by, for instance, establishing recreational events inside refugee camps; the design of efficient facilities which can help minimize the exposure to episodes of SGBV; the monitoring of the traditional legal systems adopted within the refugee community to address SGBV and of their consistency with international

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<sup>92</sup> Ibidem, p. 31.

<sup>93</sup> Ibidem.

<sup>94</sup> Ibidem.

<sup>95</sup> Ibidem, p. 33-34.

human rights standards; and, finally, the elaboration of an effective system to monitor and report episodes of SGBV.<sup>96</sup>

While planning prevention activities to help the identification of the causes of SGBV is of outstanding importance, it is also necessary to clearly recognise the consequences of these acts both on the victim/survivor and the community in order to elaborate effective and efficient responses. The focal point of every response activity relies on the existence of a referral system which enables victims/survivors to report episodes of violence.<sup>97</sup> The lack of reporting is in fact one of the main problems to face while elaborating projects addressing SGBV. The reasons for the absence (or a very low rate) of reports on SGBV episodes range from the social stigma attached to victims/survivors to a general sense of impunity for the perpetrators, which is often fostered by the traditional conflict-resolution mechanisms which are, in many cases, biased by a patriarchal approach. As underlined by the SGBV Guidelines, an effective reporting system has to be first known by both the refugee community and the humanitarian staff, so that “[...] victim/survivor knows where to go to receive assistance and receives that assistance in a timely manner.”<sup>98</sup> Further, the staff receiving the report has to be trained in order to provide adequate and sensitive assistance to the person of concern. As to the responses, these must be developed in every sector always involving the refugee community.<sup>99</sup>

This brief overview of the SGBV Guidelines gives an idea of their main aim, which is to offer field workers adequate tools to enable them to prevent and to timely and effectively respond to instances of SGBV; as is the case for every document that is drafted with a field level focus, the real challenge consists in their implementation.

The next chapter is dedicated to the analysis of the main risks women refugees can encounter during displacement with the aim of linking the above-analysed documents to the reality experienced by hundreds of thousands of women in refugee settings all over the world.

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<sup>96</sup> Ibidem, p. 34-50.

<sup>97</sup> Ibidem, p. 56.

<sup>98</sup> Ibidem.

<sup>99</sup> Ibidem, p. 58-67.





## CHAPTER 3: WOMEN REFUGEES: A CATEGORY IN NEED OF SPECIAL PROTECTION

### 1. Introduction: Some Statistical Data

In every refugee situation, women amount to about the half of the displaced population: according to UNHCR's "Global Refugee Trends of 2004",<sup>100</sup> 49% of the world's refugees are women and in cases of mass displacements this percentage usually increases.<sup>101</sup> Age-wise, women constitute the majority of the over-60 refugee population,<sup>102</sup> reflecting the higher life-expectancy of women world-wide.

One of the reasons for the high percentage of women within refugee communities around the world is that they form the majority of the civilian population during armed conflicts. When wars are within the borders of States and characterised by a clash between different ethnic groups, civilians become the main target: this is why these conflicts are the main source of mass population movements, both across and within States borders. Moreover, these kinds of conflicts affect women in a different way than men: "[m]en and boys are more likely to carry weapons and be party to the conflict. Women and children are more likely to be civilian casualties, innocent victims of warring factions and the recipients of male violence and aggression."<sup>103</sup>

In situations of chaos, the imbalance of power between the genders often results in mass violations of women's rights, in particular in the form of SGBV, and in women being forced to provide for the wellbeing of their families while men are fighting or killed during the conflict. Women are often deliberately targeted during ethnic cleansing actions, as occurred in Bosnia, Rwanda and East Timor,<sup>104</sup> and are also more exposed to "collateral damages", such as landmines, since they are in charge of collecting water and firewood in areas made unsafe by the ongoing fighting. Pushed by the necessity of

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<sup>100</sup> Population and Geographical Data Section Division of Operational Support UNHCR Geneva, *2004 Global Refugee Trends...*, cit.

<sup>101</sup> The highest percentages of women are found, among others, in Chad (57%), Kazakhstan (59%) and Nicaragua (59%), *ibidem*, Table 10.

<sup>102</sup> *Ibidem*, paragraphs 32-33.

<sup>103</sup> Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk: Risk Factors, Protection Solutions and Resource Tools*, February 2006, p. 3, at [www.womenscommission.org/WomRisk.pdf](http://www.womenscommission.org/WomRisk.pdf)

<sup>104</sup> For an in depth overview of the incidence of rape and other forms of sexual violence during ethnic and civil conflicts, in particular in the former Yugoslavia, Rwanda and Algeria see Karima Guenivet, *Stupri di Guerra*, Rome, Luca Sossella Editore, 2002.

fleeing from the combatants and the need of sustaining their relatives, women seek refuge by crossing borders or moving to different regions of their countries.<sup>105</sup>

Women can be obliged to leave their homes not only by conflicts, but also by other factors: for example, women are often subjected to human rights violations because of the political activities of their male relatives; they are more exposed to extreme poverty, constituting 70% of the world population living below the subsistence level; and they suffer from forms of violence deriving directly from their gender, such as harmful traditional practices, domestic violence and inhumane punishments for lack of respect of social norms. In summary, the reasons pushing women to flee their homes lie in the inequality of the conditions they experience within their societies and their consequent exclusion from their communities' political, economic and social life.<sup>106</sup>

Notwithstanding the high number of women refugees and internally displaced world-wide, the number of female asylum-seekers is markedly lower than the one of men,<sup>107</sup> reflecting both a poorer awareness by women refugees of the rights arising from their condition and the tendency of society to consider women as dependent on the claims for asylum of their male relatives.<sup>108</sup>

Women refugees are thus especially vulnerable in all of the phases of the refugee cycle: as the United Nations Secretary General stated, "[t]he differential impact of armed conflict and specific vulnerabilities of women can be seen in all phases of displacement."<sup>109</sup> The reasons for this vulnerability and the actions taken by UNHCR to address the protection of women refugees are the subject of this chapter.

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<sup>105</sup> Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 6; for an overview of the gender effects of modern conflicts, see J. G. Gardam and M. J. Jarvis, *Women, Armed Conflicts and International Law*, The Hague, Kluwer Law International, 2001.

<sup>106</sup> Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 7.

<sup>107</sup> Population and Geographical Data Section Division of Operational Support UNHCR Geneva, *2004 Global Refugee Trends...*, cit., paragraph 32.

<sup>108</sup> Women are often not considered during interviews for refugee status, are interviewed in a non-gender sensitive way or are asked to support the claim of their male relatives often without being aware of the reasons of their claim; see UNHCR, *Guidelines on the Protection of Refugee Women*, paragraphs 57-62, July 1991, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>109</sup> UN Security Council, *Report of the Secretary-General on Women, Peace and Security*, October 2002, cited in Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 1.

## 2. Why are Women Refugees in Need of Special Protection?

As seen above, women constitute about half of the refugee population world-wide; if we add to this figure the number of children following their female relatives during displacement, the percentage greatly increases, with women and children constituting 80% of the total displaced population of the world.<sup>110</sup>

Notwithstanding this striking statistic, the attention to their particular needs is only quite recent.<sup>111</sup> One of the main reasons for the decades-long lack of consideration is that the specific kinds of violence affecting women have been long considered as belonging to the “personal sphere”, so that “in the refugee context, one finds a consistent lack of attention to the particular experiences of refugee women and their special needs in refugee camps and in obtaining permanent resettlement.”<sup>112</sup> The definition of refugee provided by Article 1A(2) of the 1951 Convention, for example, is clearly drafted with a man applicant in mind, is lacking of references to gender as a ground of persecution and is based in particular on political activities which are still considered a male realm in many countries.<sup>113</sup>

But why are women and girl-children so vulnerable in refugee-like situations? As stated in UNHCR “Guidelines for the Protection of Refugee Women”<sup>114</sup> drafted in 1991, “[w]omen share the protection problems experienced by all refugees”,<sup>115</sup> namely against *refoulement*, armed attacks, unjustified detention and to favour access to basic economic and social rights; but in addition to these basic requirements “[...] refugee women and girls have special protection needs that reflect their gender: they need, for example, protection against manipulation, sexual and physical abuse and exploitation, and protection against sexual discrimination in the delivery of goods and services.”<sup>116</sup>

One of the main reasons for the high vulnerability of women in refugee settings is that displacement often provokes a change in the traditional social structures providing for their protection:

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<sup>110</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, in Kelly D. Askin and Dorean M. Koenig (eds), *Women and International Human Rights Law*, New York, Transnational Publishers, vol. 3, 2001, p. 198.

<sup>111</sup> UNHCR started addressing the issue of the protection of women refugees only in the 1980s; see Jeanne Ward, *Gender-Based Violence among Conflict-affected Populations...*, cit., pp. 69-70; for a more in depth analysis of UNHCR’s documents and activities on women refugees see next section.

<sup>112</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., p. 198.

<sup>113</sup> Ibidem, pp. 199-200; see also UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, May 2002, in “International Journal of Refugee Law”, vol. 14, No. 2/3, p. 459; the same remark can be done with regard to the United Nations Convention against Torture, see Hannah Pearce, *An Examination of the International Understanding of Political Rape...*, cit.

<sup>114</sup> UNHCR, *Guidelines on the Protection of Refugee Women* (hereinafter Guidelines), paragraph 2, July 1991, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>115</sup> Ibidem, paragraph 2.

<sup>116</sup> Ibidem, paragraph 3.

women can find themselves for the first time in charge of providing for the needs of their families, assuming different roles than the ones customarily belonging to them.<sup>117</sup> Furthermore, the change in gender roles deriving from the particular conditions characterising life in refugee settings often creates a sense of frustration in men, no longer able to provide for the material needs of their families. Since in almost every society the concept of masculinity is strictly related to the success in the economic field, “[...] changing roles and the loss of breadwinner status can have very damaging effects on the male ego.”<sup>118</sup> Men can find themselves in a condition that does not reflect the idea of gender roles they have been used to considering as “normal”. This feeling can be reinforced by the activities of humanitarian agencies within refugee communities aimed at empowering women in order to reduce their likeliness of being subjected to SGBV. When these projects target only women, their possibility of success is limited; moreover, men feel excluded with the risk of further fostering the disrupt of social equilibrium.<sup>119</sup> The increase in domestic violence<sup>120</sup> and drug and alcohol abuse<sup>121</sup> within refugee populations is often a consequence of men’s frustration and of the construction and deconstruction of gender roles. To contrast these tendencies, it is of paramount importance to include men in gender-based projects.<sup>122</sup>

Sexual violence is a particularly serious risk to which women refugees are subjected. Rape and other forms of sexual violence can happen for many reasons, from the continuation of a policy of ethnic cleansing, to retaliation for a woman’s independence and economic success within the refugee community, to the above-mentioned lack of traditional mechanisms of protection.<sup>123</sup> Whatever the reason, the consequences are exceptionally severe not only for the survivor, but for the entire community. Women who experience sexual violence are highly exposed to both physical and psychological problems with overwhelming consequences on their ability to contribute to their communities’ development. Due to the social stigma attached to rape, the majority of survivors never report the incident, so precise data on the incidence of sexual violence within displaced populations are

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<sup>117</sup> Women’s Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 3; see also Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., pp. 207-210.

<sup>118</sup> Ibidem, p. 212; Women’s Commission for Refugee Women and Children, *Masculinities...*, cit., p. 7.

<sup>119</sup> Ibidem, pp. 21-23.

<sup>120</sup> For example, while the 20% of non-displaced women in Colombia are survivors of domestic violence, this percentage increases to the 52% within displaced women; ibidem, p. 10.

<sup>121</sup> With regard to alcohol and drug abuse it is worth citing Miss Coomaraswamy’s comment on its link with violence against women: “While alcohol does in many cases exacerbate violence, alcohol does not itself cause violence against women. The focus on alcohol or drugs, rather than on male patriarchal ideology, which has its ultimate expression in violence against women, undermines the anti-violence movement”, quoted in Women’s Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit., p. 24.

<sup>122</sup> UNHCR, *Inter-Agency Lessons Learned Conference Proceedings...*, cit., pp. 45-46.

<sup>123</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., pp. 211-214.

not available;<sup>124</sup> nevertheless, numerous reports on the conditions of women refugees all over the world make clear that the number of women experiencing sexual violence during every phase of the displacement cycle is extremely high.<sup>125</sup>

While displaced, women, and in particular female children, are tremendously exposed to traditional harmful practices, including female genital mutilation, early or forced marriages, honour killings, infanticide or neglect leading to death of girls, and denial of education. Data show that in displaced contexts female genital mutilation and early marriages increase both as a consequence of society's will not to lose their traditional culture in uprooted conditions, and as a way to provide a male protector to young girls through marriage.<sup>126</sup>

Women in refugee camps are also overloaded with their daily activities: "[t]hey not only must contend with carrying out their traditional roles as food preparers, water and wood gatherers, and child care providers, but they must attempt to maintain the family's sense of cohesion, well-being, and cultural values [...]"<sup>127</sup> Often, this means that women and girl-children refugees do not have the time to receive health treatments or participate in activities that could enhance their preparedness and awareness, increasing their independence and possibility to react to violations of their basic rights.<sup>128</sup> Furthermore, in the case of girl refugees, the burden of domestic tasks often causes them to drop-out of school and thus suffer long-lasting consequences in terms of their ability to actively participate in their communities' life.

Women are also more exposed to the consequences of food shortages, both because of the inequities still existing in the system of distribution of food-items<sup>129</sup> and as a result of traditional social structures that put the needs of women after those of their male relatives and of their children.<sup>130</sup> Clearly enough, the lack of food brings about serious health problems not only for women, but also for their children, resulting in a predictable increase in maternal and child death rates. Moreover, a food and non-food distribution system which discriminates against women can have serious protection consequences: in many cases it has been reported that "[...] women, girls and boys had to exchange sex

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<sup>124</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., p. 213.

<sup>125</sup> "In the specific area of rape, it is estimated that over the 50 per cent of refugee women have been raped": Hannah, Pearce, *An Examination of the International Understanding of Political Rape...*, cit., p. 555.

<sup>126</sup> Women's Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 15.

<sup>127</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., p. 207.

<sup>128</sup> Ibidem, p. 208.

<sup>129</sup> "For example, during the Afghani war, widows in Pakistani refugee camps were starving for weeks due to a food distribution that favoured men, at the expense of the women", ibidem.

<sup>130</sup> Ibidem, p. 209.

for food when they receive no or inadequate food rations.”<sup>131</sup> Women are also obliged to leave the relatively safe camp environment in order to augment food rations, thus exposing themselves to a higher possibility of being assaulted by military personnel, police, fighters or members of the host community, who are often hostile towards refugees because can be considered as materially privileged.<sup>132</sup>

With regard to the system of distribution of humanitarian aid items, the registration of refugees covers a fundamental role: if registration criteria coincide with the singling-out of heads of households, very often only men will be entitled to personal documentation. Women without documents are more exposed both to discrimination in the distribution of food and non-food items and to assaults while leaving the camps in order to provide for the needs of their families.<sup>133</sup>

Among women refugees, some groups are in particular need of special protection due to their higher vulnerability. This is the case of young girls who are especially exposed to the risk of being trafficked, abducted by armed factions as porters, combatants or sex slaves, and, lacking the necessary knowledge, more easily subjected to sexually transmittable diseases.<sup>134</sup> Elderly women are also an especially vulnerable group, in particular when they are alone: the international community has often treated them more as “[...] persons with multiple needs rather than as resources with a lifetime of experience and wisdom,”<sup>135</sup> so that they suffer from greater marginalization and exposure to abuses. The same can be said of mentally and physically disabled women, who can be easily subjected to sexual and physical violence, in addition to often being the last to receive health and food assistance.<sup>136</sup> Urban refugees and internally displaced are also groups in need of special attention since the particular conditions of their displacement make it difficult for humanitarian agencies to provide them with minimum standards of protection.<sup>137</sup>

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<sup>131</sup> Women’s Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit., p. 27.

<sup>132</sup> Protection problems related to water and wood gathering are underlined by many reports on the conditions of women refugees and on the incidence of sexual and gender based violence against them: one exemplary case was the one of the Dadaab camp in Kenya where an assessment led by CARE showed that 90% of rapes were occurring while women were collecting wood outside the camp. UNHCR started a project of distribution of firewood in the camp that contributed to a decrease in the number of rapes committed against women while collecting firewood; at the same time the project was unsustainable for its costs and increased the dependency of the refugees in the camp from external help. Moreover, rapes in other settings increased showing that a focus on the structural causes of rape is needed while addressing the problem of sexual violence in refugee settings; see Jeanne Ward, *Gender-Based Violence among Conflict-affected Populations...*, cit., p. 72; Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., pp. 211-212.

<sup>133</sup> Ibidem, p. 212.

<sup>134</sup> Women’s Commission for Refugee Women and Children, *Displaced Women and Girls at Risk...*, cit., p. 4.

<sup>135</sup> Ibidem.

<sup>136</sup> Ibidem, p. 5.

<sup>137</sup> Ibidem.

Considering these main factors of risk women refugees face, it is now the moment to analyse the counter-measures adopted by humanitarian agencies, in particular UNHCR, to cope with the challenges related to the protection of this particularly vulnerable category of displaced persons.

### 3. The International Protection of Women Refugees

The first documents drafted by UNHCR directly addressing the particular conditions of displaced women date back two decades: in 1985, after the Third World Conference on Women held in Nairobi, a working group on female refugees was created in order to increase the international community's attention to the special needs of women affected by armed conflicts,<sup>138</sup> needs that had been already highlighted by the problems faced by Vietnamese and Afghani women refugees during the 1970s and early 1980s.<sup>139</sup>

In the same year, UNHCR's Executive Committee issued the first conclusion related to the special protection needs of women refugees.<sup>140</sup> The Executive Committee stressed the necessity for States and UNHCR to address the special problems faced by women refugees, recognizing that "[...] these problems result from their vulnerable situation which frequently exposes them to physical violence, sexual abuse, and discrimination."<sup>141</sup> The Committee further noted the importance of sustaining projects aimed at empowering women through education and income generating activities, the need for the direct participation of women in projects elaborated to increase their protection and the necessity of collecting precise data on women refugees in order to implement projects really responding to the most pressing issues affecting them while displaced.<sup>142</sup>

In the last paragraph of the 1985 Executive Committee's Conclusion, an important reference is made to the possibility for States Parties to the 1951 Convention to include women asylum-seekers in the "particular social group" category in the sense of Article 1A(2) of the Convention.<sup>143</sup>

During the 1980s, significant precedents of operational applications of special projects addressing issues affecting displaced women were developed within the Central American refugee communities: UNHCR, together with NGOs involved in relief projects, started programmes aimed at developing skills and awareness of displaced women coming mainly from rural backgrounds in

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<sup>138</sup> Jeanne Ward, *Gender-Based Violence among Conflict-affected Populations...*, cit., p. 69.

<sup>139</sup> Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit., p. 11.

<sup>140</sup> Executive Committee of the High Commissioner's Programme, *Refugee Women and International Protection*, No. 39 (XXXVI), 1985, at [www.unhcr.org](http://www.unhcr.org).

<sup>141</sup> Ibidem, paragraph d).

<sup>142</sup> Ibidem, paragraphs g)-i).

<sup>143</sup> Ibidem, paragraph k); for a brief analysis of the development of the determination of refugee status for cases of gender-based persecution see Annex 1 to the present work.



Guatemala and El Salvador. The success of the initiative was highlighted by the participation of these women in the negotiation of the terms for the return to their countries.<sup>144</sup>

The increased attention of the international community in the protection of women refugees resulted, in 1989, in the appointment of the first UNHCR Senior Coordinator for Refugee Women, whose main responsibility was to elaborate proposals of policies to be incorporated in UNHCR's programmes with the aim of responding to displaced women's special needs.<sup>145</sup> At first, this position was created on a temporary basis, but it became soon clear that the problems affecting women refugees needed a continuous and expert attention, so that in 1992 the post was integrated in the organizational budget and transformed in a stable position.<sup>146</sup>

In 1990, UNHCR's Executive Committee issued the "Policy on Refugee Women":<sup>147</sup> based on this document, UNHCR released the "Guidelines on the Protection of Refugee Women" the following year.<sup>148</sup> The purpose of the Guidelines was to "[...] help the staff of UNHCR and its implementing partners to identify the specific protection issues, problems and risks facing refugee women"<sup>149</sup> by both outlining measures to be taken in order to increase women refugees' protection, and responses to violations already occurred.<sup>150</sup> The structure of the Guidelines reflects this purpose: the document is divided in different sections which touch upon every step to be taken in order to enhance the protection of women refugees, from the assessment and planning process, to the more appropriate interventions to respond to physical and legal protection problems, and from the improvements needed in refugee settings (for example in the camps design and in the distribution of humanitarian aid), to the actions needed in order to respond to protection issues and to report on them.<sup>151</sup>

In 2001, the Women's Commission on Refugee Women and Children (WCRWC) issued an independent assessment<sup>152</sup> on the application of the Guidelines with the aim of identifying the main successes and shortcomings of a decade of their implementation. The impact of the recommendations contained by this report on UNHCR's operations was then analysed, together with the one of two other

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<sup>144</sup> Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit, p. 11.

<sup>145</sup> Ibidem, p. 12.

<sup>146</sup> Ibidem.

<sup>147</sup> UNHCR, *Policy on Refugee Women*, 1990, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>148</sup> UNHCR, *Guidelines on the Protection of Refugee Women*, cit.; for a comment on the Guidelines see Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., pp. 205-207.

<sup>149</sup> UNHCR, *Guidelines on the Protection of Refugee Women*, (hereinafter Guidelines), 1991, paragraph 16, [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>150</sup> Ibidem.

<sup>151</sup> Ibidem, paragraphs 17-20.

<sup>152</sup> Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit.

independent assessments on refugee children and community services, by UNHCR's Executive Committee in June 2004.<sup>153</sup> WCRWC's report underlined that the Guidelines played a major role in "[...] raising awareness, serving as a programming tool and prompting the development of other tools for field workers [...]", but at the same time acknowledged that the Guidelines needed to be revised since they "[...] do not provide enough guidance on sexual exploitation, domestic violence, urban refugees and the internally displaced."<sup>154</sup> With regard to their implementation, the report recognised that the Guidelines had a very positive impact on some aspects of both protection and assistance activities,<sup>155</sup> but it noticed that "[o]verall, implementation of the Guidelines was found to be uneven and incomplete, occurring on an ad hoc basis in certain sites rather than in a globally consistent and systematic way."<sup>156</sup> Among the main barriers to the full application of the Guidelines, the WCRWC particularly emphasised that their contents were not yet standard operating principles and that a cut in financial and staff resources was not helping their homogeneous application. Moreover, women refugees still had insufficient participation in decision-making, especially when illiterate and particularly poor, and cases of SGBV were still underreported.<sup>157</sup>

Among the actions taken by UNHCR in order to follow the recommendations contained by WCRWC's report, particular relevance has the implementation of the "Gender equality and age mainstreaming pilot project". This project is based on a "[...] multifunctional approach which requires the Representative of each participating country office to form a team comprised of protection, programme and community service staff."<sup>158</sup> Its main aim is to address one of the shortcomings highlighted by the independent assessments analysed by the Executive Committee, the lack of coordination between sectors in dealing with issues affecting women refugees. With regard to SGBV, UNHCR held several training workshops in order to improve the knowledge of this phenomenon within its staff and its implementing partners, as well as responding to the need for transposing the

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<sup>153</sup> Executive Committee of the High Commissioner's Programme, Implementation of the Recommendations on the Independent Evaluations on Refugee Women, Refugee Children and Community Services: Summary Report, EC/54/SC/CRP.13, 7 June 2004, at [www.unhcr.org](http://www.unhcr.org).

<sup>154</sup> Women's Commission for Refugee Women and Children, *UNHCR Policy on Refugee Women and Guidelines on Their Protection...*, cit., p. 1.

<sup>155</sup> Some of these positive aspects, among others, are a more gender-sensitive approach to refugee status determination, improvement of the mechanisms for registration, increase in the number of girl refugees attending school, improvement of the measures aimed at involving women refugees in camp management, more availability of reproductive health services and an enlarged direct participation of women in food distribution systems; *ibidem*, p. 2.

<sup>156</sup> *Ibidem*.

<sup>157</sup> *Ibidem*, pp. 2-5.

<sup>158</sup> Executive Committee of the High Commissioner's Programme, Implementation of the Recommendations on the Independent Evaluations on Refugee Women, Refugee Children and Community Services: Summary Report, EC/54/SC/CRP.13, 7 June 2004, paragraph 9, at [www.unhcr.org](http://www.unhcr.org).

principles contained by the Guidelines into operational standards as highlighted by WCRWC's report.<sup>159</sup>

Apart from the Guidelines, one of the most relevant documents dealing with the protection of women refugees is "Sexual and Gender based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response," analysed in the previous chapter.<sup>160</sup>

UNHCR's will to increase the protection accorded to women refugees was also reflected by the declaration in 2001 of the High Commissioner's Five Commitments to Refugee Women, released as a response to consultations held with women refugees from all across the world during the same year.<sup>161</sup> The five commitments address several issues affecting women refugees, stressing the importance of including women in the management of refugee camps and refugee communities in other settings, in particular with regard to the distribution of food and non-food items, and providing every refugee, including women, with individual documentation. The importance of developing country-level projects to address SGBV and to make the delivery of sanitary material a standard practice of all UNHCR's projects are also part of the commitments.<sup>162</sup>

Of course, women refugees are not only entitled to the special protection arising from their refugee condition, but also to all the relevant provisions of international human rights instruments dealing with women's rights, in particular the Convention on the Elimination of All Forms of Discrimination against Women<sup>163</sup> and the United Nations General Assembly Declaration on the Elimination of Violence against Women.<sup>164</sup> These instruments are significant not only in providing a framework for the protection of women refugees while displaced, but also to determine the refugee status of women on the grounds of SGBV. The issue of the determination of refugee status in cases of gender-related persecution is briefly analysed in the first annex to the present work.

From the above, it is clear that, despite the significant delay, the situations affecting women refugees are now an integral part of UNHCR's as well as other relief agencies' policy towards displaced people. Notwithstanding the commitment to improve women refugees' livelihood, the real conditions encounter by the female population in refugee-settings is still very often characterised by

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<sup>159</sup> Ibidem, paragraph 14.

<sup>160</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit.; see Chapter 2, Paragraph 3.

<sup>161</sup> UNHCR, *Respect our Rights: Report on the Dialogue with Refugee Women*, June 2001, at [www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4](http://www.unhcr.org/cgi-bin/texis/vtx/home?page=protect&id=3b83a48d4).

<sup>162</sup> In 2005 UNHCR Executive Committee issued a report to monitor the developments with regard to the field implementation of the 2001 Commitments: see Executive Committee of the High Commissioner's Programme, *Report on the High Commissioner's Five Commitments to Refugee Women*, EC/55/SC/CRP.17, June 2005, at [www.unhcr.org](http://www.unhcr.org).

<sup>163</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, U.N. Doc. A/RES/34/46, December 1979.

<sup>164</sup> Declaration on the Elimination of Violence against Women, G.A. Res. 2/8/104, U.N. Doc. A/48/49, 1994.

discrimination, and episodes of SGBV remain worryingly common within displaced communities. The effort put by humanitarian organizations is often rendered meaningless by the policies enacted by the host country towards refugees, in particular in non-Convention environments.

The study of the conditions characterizing women refugees from Burma in Thailand, a State which is not party to the 1951 Convention or its 1967 Protocol, is the subject of the second part of the present work.

## **PART 2: THE APPLICATION OF THE OPERATIONAL FRAMEWORK**

## **We Challenge You**

*There I am, a virgin, pretty,  
A student at university  
Fair and full of youth  
With nothing artificial on my  
body,  
All natural curves.*

*My age,  
Counted on tender leaves of  
thabyé  
At the time of the eighty-eight  
uprising,  
A shapely eighteen.*

*Here at our university  
What is there to fear?  
I'll fight, fight  
And be unafraid,  
With no thought of surrender.  
Let's form a student's union!*

*It was in March, 1988.  
One night in one of our fascist  
state prisons  
I was robbed of my virginity,  
Unable to defend myself  
I was pinioned,  
Powerless to move or struggle.  
I couldn't, I couldn't.  
It was like drowning in shallow  
water.*

*My lips were kissed by those  
fascists,  
My breasts were in their mouths,  
And inside me ... those fascists....  
I was raped by a fascist 'security'  
force,  
Possessed alive by some evil nat  
inside  
As the guns of the moment with  
endless lust*

*Tore away my virginity -  
One, two, three, four and more.  
I all but died.*

*Nevertheless  
I did not die. Nor did I cry  
Though my womb had been  
defiled.  
I still love our resistance movement  
And love democracy.  
So hey,  
You fascist government!  
For gnawing away at my flesh and  
blood  
I can never ever forgive you, never.  
Never till the end of time.*

*And hey!  
Successors of that government,  
You lackeys, you security force  
dogs!  
Come on, if you've got the guts,  
Come with your guns out down  
the path of bloodshed.  
There's a young woman here who's  
working for peace,  
A Burmese flower that has been  
ravished.  
You government lot, I'll fight to  
bring you down.  
We'll never be brought to our  
knees.  
We'll never surrender.*

- Poem written by a former activist for  
independence in commemoration of the 1988  
events, from "The Burma Project", at  
[www.burmadebate.org/archives/bdsummer98.h  
tml](http://www.burmadebate.org/archives/bdsummer98.html) -

## CHAPTER 1: BRIEF POLITICAL AND HISTORICAL OVERVIEW OF BURMA

A former British colony, Burma is “[...] a country rich in ethnic diversity, natural resources, and human tragedy”.<sup>165</sup>

The Union of Myanmar<sup>166</sup> is composed of seven Divisions and seven States: the Divisions are characterised by the presence of a population composed for its majority by Burmans, who amount to the 68% of the residents of the Union;<sup>167</sup> the States, on the other hand, are inhabited by the seven major ethnic minorities of the country: the Shan, the Kayah<sup>168</sup>, the Kayin<sup>169</sup>, the Mon, the Chin, the Kachin and the Rakhine.<sup>170</sup> These main ethnic groups are only a small part of the more than one hundred minorities that have been identified in the country, each of which with their different languages and habits, and usually living in border areas.<sup>171</sup> The main religion of the country, practiced by the 89% of the population, is Theravada Buddhism;<sup>172</sup> other religions include Catholicism, Protestantism, Islam, Hinduism and Animism. It is interesting to note that religions other than Theravada Buddhism are usually practiced by the ethnic minorities, originally Animists or Buddhists, in part as an attempt to resist the policy of Burmanisation imposed by the military regime.<sup>173</sup>

The country has been part of the British Raj from 1885 to 1948. Prior to and during the Second World War, a strong movement for independence arose led by Bogoyoke<sup>174</sup> Aung San who, in an attempt to hasten the process of independence from the British control, started fighting against the

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<sup>165</sup> Betsy Apple, *School for Rape: an Earthrights International Report*, February 1998, p. 8, at [www.ibiblio.org/freeburma/docs/school-for-rape.html](http://www.ibiblio.org/freeburma/docs/school-for-rape.html).

<sup>166</sup> The junta decided to change the name of the country from Burma to Myanmar in 1989, allegedly for sake of precision; in reality, the new name reflects the Burman ethnic group way of referring to the country. On the same ground, other names of States, Divisions and towns were changed in 1989: for example Rangoon, the capital, is now called Yangon. The use of one name or the other carries political implications, as Burma is the choice employed by political opponents as well as by the States that do not recognise the decision of the military regime, for instance the United States. In this work, the country will be referred to as Burma, unless the content of the discussion makes necessary the use of the new official name.

<sup>167</sup> CIA, *The World Fact Book*, at [www.cia.gov/cia/publications/factbook/geos/bm.html](http://www.cia.gov/cia/publications/factbook/geos/bm.html).

<sup>168</sup> Also referred to as Karenni.

<sup>169</sup> Also referred to as Karen.

<sup>170</sup> Also referred to as Arakan.

<sup>171</sup> Within them we can cite the Pa'O, Padaung, Wa, Naga, Rohingya, Akha and Lahu.

<sup>172</sup> CIA, *The World Fact Book*, cit.

<sup>173</sup> For a very interesting insight on the political reasons which brought to the conversion of some minorities, see Pascal Khoo Thwe, *The Land of the Green Ghosts: a Burmese Odyssey*, New York, Harper Collins, 2002. Apart from the subject of the conversion to Catholicism of the Padaung ethnic group to which the author belongs, this novel gives one of the best overview of the recent political history of Burma, in particular with regard to the 1988 events.

<sup>174</sup> “Bogyoke” in Burmese means General; the term is always associated to Aung San, sometimes simply referred to as the “Bogyoke”.

Allied Powers by assisting Japan. This choice proved to be a major strategic mistake when Burma was ultimately invaded by Japan, and became a theatre of atrocities committed by the Japanese army against the civilian population. Aung San decided then to change alliances and support the British in their fight against Japan.<sup>175</sup>

The leader of the decolonisation movement was well aware of the risks of fragmentation that independence could bring about: this is why, in an historical meeting with the leaders of the major ethnic groups of the country, he decided to give them the possibility of peacefully seceding from the Union some years after its creation, if this were the will of the communities they represented. Further, the high moral standing of Aung San was recognised by all the ethnic groups residing in Burma which considered him as a leader and a symbol of unity. Unfortunately, Bogyoke Aung San was killed in 1947 by political opponents before he could witness the independence he had struggled for during all his life.

As soon as Burma was declared independent, ethnic groups and Communist insurgents started a war against the central government then led by U Nu who, in an attempt to keep the nation united, appointed a former colleague of Bogyoke Aung San, Ne Win, as commander-in-chief of the Tatmadaw (the Burmese army). General Ne Win took power in 1962, abolishing the Constitution and imposing a military government, or, as declared by the regime's newspaper "The New Light of Myanmar", "the Tatmadaw assumed the State duty on 2 March, 1962 and saved the country." [sic]<sup>176</sup>

The ideology of the new government, which ruled Burma until 1988, was the so-called "Burmese Way to Socialism", a "[...] highly idiosyncratic mix of Marxism, Buddhism and nationalism" which soon proved to be "[...] internally inconsistent and contradictory, displaying little regard for fundamental economic principles and social realities."<sup>177</sup>

Under Ne Win's rule, a country rich in economic, as well as human resources became one of the poorest countries of the world: "[i]n December 1987, with a *per capita* income of US\$ 200 *per annum*, external debt of over US\$ 4 billion, and foreign exchange reserves of US\$ 20 million, Burma was admitted to least developed country (LDC) status by the United Nations."<sup>178</sup>

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<sup>175</sup> An interesting overview of the Japanese occupation of Burma is given by Michio Takeyama, *Harp of Burma*, United States, Tuttle Publishing, 1966.

<sup>176</sup> "The New Light of Myanmar", *Hailing the 61<sup>st</sup> Anniversary Armed Forces Day: Honouring the Tatmadaw*, 23 March 2006, at [www.myanmar.com/nlm/article/Mar06/Mar23.htm](http://www.myanmar.com/nlm/article/Mar06/Mar23.htm).

<sup>177</sup> Ananda Rajah, *Burma: Protracted Conflict, Governance and Non-Traditional Security Issues*, Institute of Defence and Strategic Studies Singapore, May 2001, p. 11, at [www.ntu.edu.sg/IDSS/publications/WorkingPapers/WP14.PDF](http://www.ntu.edu.sg/IDSS/publications/WorkingPapers/WP14.PDF).

<sup>178</sup> *Ibidem*, p. 7.



Clear examples of the irrationality ruling the country under Ne Win's control are the demonetisations decided by the government in 1964, 1985 and 1987, each of which had a devastating impact on the savings of thousands of people. To add irrationality to an already disputable economic decision, in 1985 the 100 and 50 *kyat* notes were substituted by 15, 45 and 75 *kyat* notes, to be replaced only after two years by 90 *kyat* notes. The official aim of this policy was the struggle of the central government against the ethnic guerrillas and the widespread black market; in reality, there are good reasons to believe that the motivation is to be found in astrological calculations based on Ne Win's lucky number, 9, and the celebration of his 75<sup>th</sup> birthday in 1985.<sup>179</sup>

The last demonetisation is considered to be one of the leading factors in the eruption of peaceful demonstrations led by university students throughout the country in 1988 in favour of the end of the military regime and the institution of a democratic government. During the summer of 1988, Daw Aung San Suu Kyi, Bogyoke Aung San's daughter, came back to Burma to take care of her dying mother. She immediately got involved in the political turmoil of the country, becoming a member of the new-born National League for Democracy (NLD) and delivering numerous speeches in front of thousands of people. On the 26<sup>th</sup> of August 1988, Daw Aung San Suu Kyi gave the speech that confirmed her leading role in the non-violent fight for democracy in Burma, which started with the famous statement "I could not, as my father's daughter, remain indifferent to all that was going on. This national crisis could, in fact, be called the second struggle for national independence."<sup>180</sup>

The answer of the regime was the violent repression of the manifestations; it is estimated that between three and ten thousand people were killed between August and September 1988, including Buddhist monks who, strong with the respect paid to them by the population, marched in front of the demonstrators in order to protect them from the army. Some analysts maintain that the disturbances characterizing the 1988 demonstrations were fostered by the army itself in order to create a general sense of panic within the population and strengthen the grip of the military regime, a supposition which is actually feasible considering the fact that in August of the same year 9000 inmates were suddenly released from different prisons throughout the country.<sup>181</sup>

In September 1988, Ne Win left the position he held for more than twenty years, replaced by a military government known as the State Law and Order Restoration Council (SLORC). The interpretation of the 1988 events and of the introduction of a government under direct military control given by the "New Light of Myanmar" is again worthy of mention: "In 1988, the people were

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<sup>179</sup> Ibidem, p. 11.

<sup>180</sup> At [www.edwardsly.com/aung.htm](http://www.edwardsly.com/aung.htm).

<sup>181</sup> Ananda Rajah, *Burma: Protracted Conflict...*, cit., p. 12.

displeased with the policy and poor performance of the ruling government. Taking advantage of this, above-ground and underground insurgents and leftists and rightists and internal and external elements created disturbances. [...] As a result, the Tatmadaw had to unavoidably assume the State duties on 18 September, 1988 and saved the country.” [sic]<sup>182</sup>

The SLORC called for free elections in May 1990, and although the NLD leader Daw Aung San Suu Kyi had been under house arrest since July 1989, her party won the elections with an overwhelming majority. Nevertheless, the SLORC refused to transfer power to the democratically elected government and actually increased its repression of the pro-democracy movement, fostering a new flow of political opponents to third countries as it had already happened in the aftermath of the 1988 events, when approximately 10.000 students sought refuge in Thailand. Since 1989 Mrs Suu Kyi, together with many other political activists, has been incarcerated or under house arrest for prolonged periods. The SLORC, which changed its name into State Peace and Development Council (SPDC) in 1997, established a National Convention with the aim of drafting a new Constitution in 1993, but so far no result has been achieved.

One of the main features characterizing recent Burmese history is the ongoing conflict between the central government and various groups of ethnic insurgents. From the moment of independence, Burma’s stability has been undermined by endemic low-intensity conflicts with self-evident consequences on the overall development of the country.

Ne Win, as well as the SLORC/SPDC, applied the so-called “Four Cut Policy”<sup>183</sup> in order to weaken the ethnic insurgency. This policy consists in cutting off food, funds, intelligence and recruits to the guerrillas, mainly targeting the ethnic civilian population by forcibly relocating villages to areas under strict control of the army, destroying crops, recruiting civilians as porters and “human” mine detectors, and imposing exorbitant taxes on the villagers. Clearly enough, this policy is totally contrary to International Humanitarian Law and had the consequence of obliging thousands of civilians to seek refuge in neighbouring countries.

Forced relocation of villages is a particularly serious problem in many border areas of the country. The main ethnic targets of this strategy are the Kayah and the Shan, but other ethnic minorities have also been obliged to leave their villages and move to rural or peri-urban areas characterised by a complete lack of basic services. It is estimated that in the Shan State alone in a period of less than three years (1996-1999) more than 300.000 people were forcibly relocated. A new wave of relocation and

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<sup>182</sup> “The New Light of Myanmar”, *Hailing the 61<sup>st</sup> Anniversary Armed Forces Day...*, cit.

<sup>183</sup> The “Four Cut Policy” is also referred to as “*Pya Ley Pya*” policy in Burmese.

the consequent influx of Shan villagers across the border Thailand took place in 2001. In 1999, as a consequence of the agreement reached between the United Wa State Party (UWSP) and the SPDC, a three-year programme to displace 50.000 Wa started with the aim of implementing development projects in the Northern areas of the Shan State, inhabited by the ethnic group. As a consequence of the replacement in the South, thousands of Wa died for health problems related to the change in the climatic conditions to which they were not accustomed. The relocated areas usually become free-fire zones where villagers are shot on sight if they try to access their former households and fields.<sup>184</sup>

The “Pya Ley Pya” strategy is also applied in areas under ceasefire,<sup>185</sup> sometimes with the co-operation of the insurgents groups who signed agreements with the central government. Starting in 1989, under the direction of Lieutenant-General Khin Nyunt, several armed groups decided to sign truces with the government.<sup>186</sup> The major non-ceasefire groups are the Karen National Union (KNU) and the Shan State Army (SSA). Under these agreements, the insurgent groups were allowed to “[...] retain their weapons and engage in economic activities without interference from the Tatmadaw [...]”;<sup>187</sup> in exchange, the insurgents had to recognise the sovereignty of SLORC/SPDC in the areas under their control, allowing the implementation of development projects by the central government and the passage of Tatmadaw troops in their territory.<sup>188</sup> The fact that insurgents are permitted to maintain their armies poses serious doubts about the effective monopoly of force of the central government; besides, it is argued that many of the ceasefire groups’ economic activities are mainly illegal.<sup>189</sup> An example of the connection between ethnic insurgency leaders and the regime in the management of economic activities of doubtful legality is given by the well-known drug barons Khun Sa, Lo Hsing-han and Pauk Yo Chang, chiefs of the UWSP, a group that signed a ceasefire agreement in 1989. After signing the agreement, they have been living in Rangoon and apparently enjoy very good relations with the leaders of the junta.<sup>190</sup>

The achievement of ceasefires did not coincide with the start of a demilitarization process; on the contrary, since 1988 the Tatmadaw has been subject to a massive modernisation effort, both in

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<sup>184</sup> Brenda Belak, *Gathering Strength: Women from Burma on their Rights*, Images Asia, 2002, p. 60, at [www.ibiblio.org/obl/docs/Gathering\\_Strength.htm](http://www.ibiblio.org/obl/docs/Gathering_Strength.htm).

<sup>185</sup> Ceasefires areas are also referred to as “brown areas”, in opposition to the “black areas” where the conflict is still openly going on.

<sup>186</sup> For a list of the ceasefire groups, see [www.irrawaddy.org/res/ceasefire.html](http://www.irrawaddy.org/res/ceasefire.html); the Irrawaddy is a newspaper on Burma written by Burmese and foreigners journalists outside the country.

<sup>187</sup> Ananda Rajah, *Burma: Protracted Conflict...*, cit., p. 3.

<sup>188</sup> Ibidem, pp. 2-3.

<sup>189</sup> Ibidem, p. 6.

<sup>190</sup> Ibidem, p. 12.

terms of equipment and personnel.<sup>191</sup> As stated by an analyst of Burmese politics, “[g]iven the lack of obvious threats from neighbouring states, only one conclusion can be drawn from this force modernisation and expansion in Burma: it is intended to contain internal threats to military rule.”<sup>192</sup>

Lieutenant-General Khin Nyunt, Burmese junta Prime Minister and the person in charge of the powerful Military Intelligence (MI), was accused of corruption and obliged to resign in October 2004. The real reason for the exclusion of Khin Nyunt from the junta could be, more than his involvement in corruption episodes, the consequence of a struggle internal to the regime, in particular with the SPDC leader Than Shwe, defined by a Burmese historian residing in London as “[...] one of the most powerful and least educated people in Burma”.<sup>193</sup> Following Khin Nyunt’s forcible resignation, the MI apparatus was totally changed by the junta in an effort to eliminate his supporters. Besides being the promoter of the ceasefires agreements, Khin Nyunt was also the only person in the regime open to start inga dialogue with NLD and its leader Daw Aung San Suu Kyi. As many analysts feared, Khin Nyunt’s fall opened the path to a stricter government policy towards ethnic insurgents, political opposition and international agencies working in the country.

In recent months, the junta decided to move the administrative capital from Rangoon to Pyinmana, a village in the Mandalay Division, close to the borders of the Shan and Kayah States: while officially this decision was aimed at increasing the control on the insurgents still fighting in the two States and the government safety from external attacks, the choice actually seems to be based on a fortune-teller’s suggestion. Of course, this decision contributed to increasing the communication problems of United Nations agencies, international NGOs and embassies with the central government.<sup>194</sup> Recently, four exiled political opposition groups have been designated as terrorist organisations by the regime.<sup>195</sup> In the meanwhile, the repression of the civilian population continues in particular in the Kayah State, from where an estimated 15.000 people are currently fleeing towards the border with Thailand escaping a massive campaign of the Tatmadaw against ethnic Karen rebels.<sup>196</sup> Notwithstanding the fact that the United Nations Under Secretary General for Political Affairs, Mr.

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<sup>191</sup> The number of soldiers grew from 186000 in 1988 to 450000 in 1999; *ibidem*, p. 4; as it will be analysed in a while, this effort did not include the establishment of trainings for soldiers aimed at building-up their skills and respecting International Humanitarian Law.

<sup>192</sup> *Ibidem*.

<sup>193</sup> BBC News, *Khin Nyunt’s Fall From Grace*, 19 October 2004, at <http://news.bbc.co.uk/2/hi/asia-pacific/3756052.stm>.

<sup>194</sup> BBC News, *Burma Confirms Capital to Move*, 7 November 2005, at <http://news.bbc.co.uk/2/hi/asia-pacific/4413728.stm>.

<sup>195</sup> BBC News, *Burma Bans Exile “Terror Groups”*, 14 April 2006, at <http://news.bbc.co.uk/2/hi/asia-pacific/4910708.stm>.

<sup>196</sup> BBC News, *Burma Karen Families on the Run*, 16 May 2006, at <http://news.bbc.co.uk/2/hi/asia-pacific/4987224.stm>.

Gambari, was recently allowed to visit Mrs Suu Kyi, who is still under house arrest,<sup>197</sup> the latest developments in the country do not give rise to many reasons of hope for a democratic reform.

The overall political situation, in particular the ongoing ethnic conflict in some areas of the country, has an enormous impact on women's livelihood and on their decision to flee to neighbouring countries, especially Thailand. The conditions of women in Burma, the analysis of the typologies of SGBV to which they are subjected and their connection with the flight to Thailand are the subject of the next chapter.

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<sup>197</sup> BBC News, *UN Official Meets Burma's Suu Kyi*, 20 May 2006, at <http://news.bbc.co.uk/2/hi/asia-pacific/5000306.stm>; the SPDC decided to prolong the period of detention of the Nobel Prize on the 27<sup>th</sup> of May 2006: see BBC News, *Burma Extends Suu Kyi's Detention*, 27 May 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/5022626.stm>.

## CHAPTER 2: A REASON FOR FLEEING: SEXUAL AND GENDER-BASED VIOLENCE IN BURMA

### 1. *Gender Equality and SGBV in Burma: Between Propaganda and Reality*

The Burmese junta ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1997. The government presented the initial report in front of the CEDAW Committee during its 22<sup>nd</sup> session in January 2000. The second report was due, as established by Article 18 of the CEDAW, four years after, but so far the Burmese government has not submitted it.

In dealing with the Burmese government's statements it is always necessary to carefully distinguish between propaganda and reality. In a country in which many areas are totally closed to the presence of international organizations, it is often difficult to gather reliable information on the real life conditions faced by the population. For this reason, the role of local NGOs is of paramount importance. In relation to women's rights, a key source of information consists of the reports written by ethnic women's organizations working in neighbouring countries, especially Thailand, which have direct contact with refugees fleeing from the repression of the Tatmadaw.

During the discussion in front of the CEDAW Committee, a shadow report was submitted by exiled women's groups. The organizations involved in the drafting of the report decided to elaborate a more in-depth analysis which resulted in the publication of "Gathering Strength: Women from Burma on their Rights".<sup>198</sup> This longer publication is the main source of information on women's conditions that is going to be used in this section.

The official position of the Burmese government on gender issues is that women in Burma enjoyed a total equality with men since the real beginning of the country's history. According to this standpoint, discrimination on ground of gender simply does not exist; therefore, women enjoy exactly the same rights as men.<sup>199</sup>

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<sup>198</sup> Brenda Belak, *Gathering Strength...*, cit.

<sup>199</sup> In a country where widespread violations of human rights have been thoroughly documented, it is difficult to take this declaration seriously. An interesting report on human rights violations in Burma is the Human Rights Yearly Report (the most recent was published in 2004), issued by the Human Rights Documentation Unit, available online at [www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/](http://www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/). This report also contains pictures documenting the abuses of Tatmadaw troops in ethnic areas.

Great emphasis is given to the influence of Buddhism on the relation between genders, in particular with regard to the absence of violence against women:<sup>200</sup> if it is true that the Buddha “[...] never slighted the role of women, either in his personal life or in his mission of teaching the truth he had found”,<sup>201</sup> it is also true that the interpretation of his teachings often does not reflect this equality between genders, as it is demonstrated by the different importance accorded to monks and nuns in the Burmese interpretation of Theravada Buddhism.<sup>202</sup>

In general, from an analysis of the Initial Report in front of the CEDAW Committee, a culture of discrimination towards women is clear. For example, with regard to a woman’s role in the family it is openly stated that the head of the household is the man, while women are in charge of all aspects of domestic management.<sup>203</sup>

The aim of this part of the present work is to show the conflict between the regime’s propaganda on gender equality and the real conditions of women in Burma. The main purpose is to demonstrate the connection between SGBV within the country and the decision to flee into neighbouring countries, in particular Thailand. Since an in-depth analysis of gender equality in Burma is beyond the scope of this work, it has been decided to analyse the different forms of SGBV confronting the regime’s position with the findings of independent women’s groups starting from the analysis of the five categories of SGBV enumerated by UNHCR.<sup>204</sup> Sexual violence and rape will be separately analysed because of two main considerations: the widespread and systematic use of rape as a strategy of war has been proven by several reports by ethnic women’s groups, as well as international NGOs; and from these reports it is clearly demonstrated that the high incidence of sexual violence in its different forms constitutes one of the main push factors for women and their families to cross the border with Thailand and other neighbouring countries.

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<sup>200</sup> “The teachings of Lord Buddha that crimes like rape and sexual violence are great sins serve as protection for women and children. Therefore there are few *reported* cases of rape and sexual assault in Myanmar” (emphasis added); CEDAW Committee, *Consideration of Reports submitted by States Parties under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Initial Report of States Parties, Myanmar*, CEDAW/C/MMR/1, 25 June 1999 (hereinafter CEDAW Myanmar Initial Report), p. 10. Regarding this statement, it is necessary to notice that no religion condones rape; besides, the low number of reported cases does not automatically coincide with a low incidence of sexual violence.

<sup>201</sup> Ibidem, p. 5.

<sup>202</sup> For a general overview of gender equality in Buddhism, see Swarna de Silva, *The Place of Women in Buddhism*, June 1994, at [www.enabling.org/ia/vipassana/Archive/D/DeSilva/WomenInBuddhism/womenInBuddhismSwarnaDeSilva.html](http://www.enabling.org/ia/vipassana/Archive/D/DeSilva/WomenInBuddhism/womenInBuddhismSwarnaDeSilva.html)

<sup>203</sup> It is for instance declared that “[s]ome families prefer daughters since daughters take on more responsibilities than the sons” [*sic*]; CEDAW Myanmar Initial Report, p. 9.

<sup>204</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit.; see Part 1, Chapter 2, Paragraph 2 of the present work.

## I. Physical Violence

According to UNHCR's categorization of the different forms of SGBV, physical violence corresponds to physical assaults, trafficking and slavery.<sup>205</sup> Physical assaults consist of "beating, punching, kicking, biting, burning, maiming or killing, with or without weapons [...]"<sup>206</sup> and are often part of other forms of SGBV. With regard to perpetrators, it is possible to draw a line between members of the family or persons well-known to the victim/survivor, and unknown individuals, including members of armies or militias.<sup>207</sup>

With regard to domestic violence, the official position of the Burmese government is that traditional society accords enough protection to women from this particular form of SGBV: "[a]lthough the findings of a study in two townships on the incidence of marital violence reveals that marital violence exists, the magnitude is not very great." [*sic*]<sup>208</sup> A contrary indication is given in independent studies which report that the incidence of domestic violence, in particular in the form of battery, is quite high;<sup>209</sup> further, this violence is perceived as "normal" by the community, as demonstrated by the answer of a woman about the reaction of society in cases of domestic violence: "[i]f a man beats his wife, sometimes friends and family will intervene. If a man hits his wife a little bit, then it is normal."<sup>210</sup> In many cases, episodes go unreported both because of a general lack of trust towards the police and of pressure by society not to make private matters public. Another important element in explaining the low number of cases reported is that women in Burma have difficulties achieving financial independence, so they are often forced to endure a violent family environment. Above all, men are considered as the head of households whose decisions must be respected by the women of the family. This view is actually confirmed by the Burmese government's CEDAW report, in which it is openly stated that "[t]he head of the household is the father [...]"<sup>211</sup>

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<sup>205</sup> Ibidem, p. 17.

<sup>206</sup> Ibidem.

<sup>207</sup> Ibidem.

<sup>208</sup> CEDAW Myanmar Initial Report, p. 10.

<sup>209</sup> It is estimated that around the 80% of Burmese families experiences some form of domestic violence: see Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, at [www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights\\_of\\_women.html](http://www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights_of_women.html).

<sup>210</sup> Brenda Belak, *Gathering Strength*..., cit., p. 79.

<sup>211</sup> CEDAW Myanmar Initial Report, p. 9.



With regard to physical assaults perpetrated by unknown persons, in particular by members of the army, many independent researches underline their widespread occurrence, frequently in combination with other human rights abuses, in particular forced labour and sexual violence.<sup>212</sup>

Trafficking of women and girls across borders in the Mekong region is a well-known phenomenon;<sup>213</sup> nonetheless, according to the military junta “[...] there are a few cases of trafficking Myanmar women to neighbouring countries.” [sic]<sup>214</sup> The government’s measures to reduce the number of episodes of trafficking result in open limitations on women’s freedom of movement, already limited in itself by the perception of their role in the society.<sup>215</sup> Women encounter major difficulties in obtaining passports and are required to be accompanied by legal guardians or be provided with special travel permits while travelling. Whilst these measures seriously affect women’s liberty, they do not contribute to a decrease in trafficking. On the contrary, since women are often compelled to leave Burma in order to find a job and provide for their families’ basic needs, restrictive measures only result in an increase in bribes to cross borders, at the same time fostering women’s vulnerability to traffickers.<sup>216</sup> Considering the often exploitative conditions migrant workers are subjected to, it is sometimes difficult to draw a precise line between voluntary illegal migration and trafficking. In any case, according to the definition given by the United Nations “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children” to the “Convention against Transnational Organized Crime”, fraud and deception can also be considered as elements amounting to coercion, recognised as the central element distinguishing trafficking from voluntary movement.<sup>217</sup> Furthermore, the measures taken by the Burmese government are mainly based on the assumption that trafficked women are always engaged in sexual work, which is highly stigmatized by the society.<sup>218</sup> In this way,

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<sup>212</sup> See Betsy Apple and Veronika Martin, *No Safe Place: Burma’s Army and the Rape of Ethnic Women*, Washington DC, Refugees International, 2003; The Karen Women’s Organization, *Shattering Silences: Karen Women Speak out about the Burmese Military Regime’s Use of Rape as a Strategy of War in Karen State*, 2004, at [www.ibiblio.org/obl/docs/Shattering\\_Silences.htm](http://www.ibiblio.org/obl/docs/Shattering_Silences.htm); Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, 2002, at [www.shanland.org/resources/bookspub/humanrights/LtoR.htm](http://www.shanland.org/resources/bookspub/humanrights/LtoR.htm); The Women’s League of Burma, *System of Impunity: Nationwide Patterns of Sexual Violence by the Military Regime’s Army and Authorities in Burma*, 2004, at [www.womenofburma.org/Report/SYSTEM\\_OF\\_IMPUNITY.doc](http://www.womenofburma.org/Report/SYSTEM_OF_IMPUNITY.doc); all these reports address, in particular, the use of rape and sexual violence as a strategy by Tatmadaw soldiers, but many of the cases reported highlight the widespread incidence of physical assaults during rapes and when women are obliged to act as porters for the army.

<sup>213</sup> For an analysis of trafficking of women and girls in Asia for purposes of sexual exploitation see Louise Brown, *Sex Slaves: Trafficking of Women in Asia*, London, Virago Book, 2001.

<sup>214</sup> CEDAW Myanmar Initial Report, p. 10, (emphasis added).

<sup>215</sup> “On a day-by-day level, community concerns for women’s security often take the form of over-protectiveness,” Brenda Belak, *Gathering Strength...*, cit., p. 53.

<sup>216</sup> Ibidem, pp. 195-200.

<sup>217</sup> United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, U.N. Doc. A/55/383, 2000, Article 3(a).

<sup>218</sup> “Myanmar society does not accept immoral ways of earning money”, CEDAW Myanmar Initial Report, p. 10.

the many women trafficked and employed in domestic work or other forms of exploitative labours are not taken into account.

A particularly worrying situation is the one faced by Rhoingya women, a Muslim ethnic group living in the Rakhine State along the border with Bangladesh. Rhoingya have been subjected to a campaign of ethnic cleansing since 1978, which has resulted in the flow of thousands of refugees to Bangladesh. They are not considered Burmese citizens, and this situation of statelessness enhances the vulnerability of Rhoingya women to every form of violence. In the refugee camps on the Bangladeshi side of the border, the existence of a trafficking network has been acknowledged: women and girl-children as young as eight years old are sold to brothels or forcibly married. The main receiving country is Pakistan, but “[i]t is believed that women who are trafficked to into Pakistan may be sent further to Saudi Arabia or the United Arab Emirates.”<sup>219</sup>

Trafficking in and around refugee camps is also documented in Thailand, even if it is very complicated to have precise figures assessing the scope of the phenomenon. Without a doubt, an enhancing factor is the difficulty for refugees to provide for their daily needs without leaving the premises of the camps, together with an increased reluctance of the Thai authorities to release permits to work outside the camps which thereby results in the greater vulnerability of those persons who decide to leave the sites illegally.<sup>220</sup>

With regard to slavery-like practices, numerous reports of NGOs and international organizations, in particular the International Labour Organization (ILO), have highlighted the widespread use of forced labour in Burma. Women as well as men are forced to work as porters for the army or for infrastructure projects developed by the government. From the reports it is clear that the conditions under which forced labourers are obliged to perform their tasks are characterised by the denial of food, water, shelter and medicines, as well as by different forms of physical violence and, in the case of women and girls, sexual violence.<sup>221</sup>

From the above analysis it can be inferred that, despite the official position and declarations of the Burmese government, women in Burma are subjected to physical violence on a widespread scale.

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<sup>219</sup> Brenda Belak, *Gathering Strength*..., cit., p. 210.

<sup>220</sup> The phenomenon of trafficking is very complex and an in-depth discussion of its characteristics is beyond the scope of this work; for an analysis of trafficking within refugee communities from Burma, see Women’s Commission for Refugee Women and Children, *Abuse Without End: Burmese Refugee Women and Children at Risk of Trafficking*, January 2006, at [www.womenscommission.org](http://www.womenscommission.org).

<sup>221</sup> See ILO, *Forced Labour in Myanmar (Burma): Report of the Commission of Inquiry appointed under Article 26 of the Constitution of the International Labour Organization*, 1998, at [www.ilo.org/public/English/standards/relm/gb/docs/gb273/myanmar.htm](http://www.ilo.org/public/English/standards/relm/gb/docs/gb273/myanmar.htm); see also Betsy Apple and Veronika Martin, *No Safe Place*..., cit.; The Karen Women’s Organization, *Shattering Silences*..., cit.; Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit.; The Women’s League of Burma, *System of Impunity*..., cit.

At the domestic level, this is a consequence of stereotypes regarding the social role of women in the community together with an unwillingness of the authorities to deal with issues that are deemed “private”. Physical violence is also directly perpetrated by State officials, in particular against ethnic women.

## II. Emotional and Psychological Violence

According to UNHCR, under this typology of SGBV it is possible to include abuse and humiliation of a non-sexual nature and confinement. In the first category, acts including verbal abuse, compulsory engagement in humiliating acts and the denial of resources to provide for the survival of the family can be included; the perpetrators are usually persons in a position of power, within or outside the family. Confinement is the restriction of the right to free movement and the isolation from friends and family; in this case as well, the perpetrators are in a position of power with respect to the victim/survivor.<sup>222</sup>

Psychological domestic violence is a difficult subject to address. The report “Gathering Strength”<sup>223</sup> underlines that, even if the research does not directly deal with it, “[psychological violence] undoubtedly also figures in many women’s lives”.<sup>224</sup>

With regard to acts amounting to psychological violence perpetrated by State’s officials, many independent reports provide examples of a widespread use of verbal abuse, sometimes in the form of death threats, in addition to the other humiliating acts committed against women by members of the army.<sup>225</sup> Moreover, women are denied the possibility to provide for their families’ needs by the constant application of the above-discussed “Four Cuts Policy,” as well as by their use as forced labourers.

With regard to confinement, the legal limitations to women’s freedom of movement have already been discussed; within the family, the traditional perception of a woman’s role can result in limitations to the free development of social relations outside the household. Women travelling alone, in particular if young, are regarded as “lost women” and are often sexually harassed: “[i]t is the attitude

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<sup>222</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit., p. 17.

<sup>223</sup> Brenda Belak, *Gathering Strength...*, cit., p. 79.

<sup>224</sup> Ibidem; an example can be considered the following statement of one of the women interviewed on the subject: “Sometimes my husband threatens me. For small things. For example, when my cooking is not tasty. But he never hits me”; ibidem, p. 78.

<sup>225</sup> One of the many examples can be Naw Aw Paw’s story, in The Karen Women’s Organization, *Shattering Silences...*, cit., p. 37.

of Burmese society that women are totally different from men and they should do things under the supervision of guardians. [If you are travelling alone] even the people in government services would start asking many questions [...].”<sup>226</sup>

Overall, it is self-evident that the constant climate of fear, which is prevalent within the ethnic minorities in particular, amounts to psychological violence and is a clear factor determining the flight from the country.

### III. Harmful Traditional Practices

Within this category, UNHCR includes Female Genital Mutilation, early or forced marriage, honour killing and maiming, female infanticide and denial of education for girls. Perpetrators usually are to be found within the family, but some of these practices are actually condoned by States both through legislation and omission of intervention.<sup>227</sup>

With respect to Burma, it is in the first place necessary to distinguish between the different ethnic groups, since all of them have distinct traditions. For instance, it is difficult to compare the condition of Rhoingya women, whose situation is very similar to women in Muslim countries, in particular neighbouring Bangladesh, to the condition of women belonging to mainly Buddhist ethnic groups; further, many differences can be highlighted between women living in rural and urban areas of the country.<sup>228</sup>

In principle, women in Burma are not discriminated against with regard to marriage and family relations: according to Buddhist customary law, the minimum age to get married is 20 years, after which women can decide their partner without the consent of the family. Wives are co-owners of family properties and in case of widowhood they have an exclusive right to the husband's belongings. Divorce is allowed for both spouses, but while female adultery is considered as a legitimate reason for a husband to divorce, the same principle does not apply with respect to male adultery.<sup>229</sup> In many cases the law does not reflect the real conditions of women within marriages. With regard to early marriages

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<sup>226</sup> Brenda Belak, *Gathering Strength*..., cit., p. 54.

<sup>227</sup> UNHCR, *Sexual and Gender-Based Violence*..., cit., p. 18.

<sup>228</sup> Of course, this consideration not only applies to the subject of traditional harmful practices, but also to everything related to the analysis of women's conditions in Burma.

<sup>229</sup> CEDAW Myanmar Initial Report, p. 10; on the grounds for divorce see also United Nations Thematic Group on Gender, *Myanmar Gender Profile*, Final Draft, Yangon, 15 September 2000, p. 19, copy with the author; Ni Ni Myint, *The Status of Myanmar Women*, Yangon, September 2002, p. 54, copy with the author.

for example, it is not uncommon for girls in rural areas to marry whilst still teenagers;<sup>230</sup> moreover, marriages arranged by parents are still very frequent.<sup>231</sup>

Forced marriages of members of the Tatmadaw with ethnic women are very frequent and are clearly part of the ethnic cleansing policy of the regime. Often, these marriages are the consequence of rape and are arranged by authorities in order to “preserve” the survivor’s honour. In highly militarised areas, marriages with members of the Tatmadaw are sometimes organized and supported by parents in the belief that, if the daughter marries a soldier, the abuses they are subjected to will decrease. There are clear accounts of the support given by army commanders to marriages of their soldiers to ethnic women: this support allegedly amounts to promotions decided based on the characteristics of the woman, in particular her education. Because Burmese children are registered under the father’s ethnic group and abortion is illegal in every circumstance, forced marriage also encompasses the crime of forced pregnancy when they result in the birth of a child.<sup>232</sup> The relation between forced marriages and the decision to flee from Burma is highlighted by many reports drafted based on the stories of women refugees in neighbouring countries, in particular Thailand.

With regard to girls’ education, the Burmese government declares that no differences are made between female and male students, since both have the same possibilities in terms of the level and typology of schooling.<sup>233</sup> In reality, particularly within rural communities, preference is given to sons especially when it is necessary to move from the village of origin in order to attend secondary and tertiary schools. This is both a consequence of the protectiveness of the society towards girls and of the belief that daughters have to take on the responsibility of the household management, as it is well-expressed by the Burmese saying “a daughter in the family is the best slave”.<sup>234</sup> If a family cannot afford the expenses for the education of every child, then sons are going to have priority over their sisters.<sup>235</sup> The reduced possibilities of studying accorded to girls contribute to increase their vulnerability to different forms of SGBV.

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<sup>230</sup> For example, from field research drafted on a Pa’O rural community of the Southern Shan State, it results that the average age at marriage is 18.6: see New Humanity-FOCSIV Myanmar, *A Survey on Gender Issues in North Hti Bwar Village Tract, Pinlaung Township, Southern Shan State*, March 2005, pp. 4-7, copy with the author.

<sup>231</sup> Brenda Belak, *Gathering Strength...*, cit., p. 46; different cases of early and forced marriages are reported, one of them of a child as young as 12.

<sup>232</sup> Ibidem, pp. 76-78.

<sup>233</sup> CEDAW Myanmar Initial Report, p. 14-16.

<sup>234</sup> Cited in Brenda Belak, *Gathering Strength...*, cit., p. 41.

<sup>235</sup> The tendency of giving priority to boys in education is confirmed by the findings of the above-mentioned field research in a Pa’O community; see New Humanity-FOCSIV Myanmar, *A Survey on Gender Issues...*, cit., pp. 7-8.

## IV. Socio-Economic Violence

Socio-economic violence consists of the discrimination against or the exclusion from the enjoyment of basic services or opportunities, such as access to health care, paid employment, education and property. According to UNHCR categorisation, socio-economic violence can be based both on gender and on sexual orientation; perpetrators can again be found at every level of society.<sup>236</sup>

The official position of the Burmese junta is that women suffer no discrimination whatsoever in the enjoyment of their social and economic rights. According to the initial report in front of the CEDAW Committee, women and girls have equal access to education, paid employment, health care and sport activities.<sup>237</sup> In reality, discrimination can be seen in all these areas. As stated in the Human Rights Yearbook of 2004 “[a]s the costs of maintaining military power and political hegemony continue, the Burmese government has allocated less and less money for infrastructure, healthcare and education. Although this affects the majority of the civilian population in Burma, it has affected women in particular ways, reinforcing traditional roles of female subordination and blocking their access to the means through which they could change their status (such as education and politics). Widespread poverty disproportionately affects women [...]”.<sup>238</sup>

Instances of discrimination based on gender can be seen, for example, in the employment and education sectors. With regard to employment, the Initial Report states that “[...] there has been no discrimination between male and female [...] all men and women can receive equal pay for work of equal value, and appropriate protective measures have already been in place.” [*sic*]<sup>239</sup> Again, the real conditions of women workers do not reflect the government’s declarations. Women in Burma are mainly employed by the agricultural sector, in particular as daily workers; in this case, for the same work they are paid around 100 *kyat* less than men.<sup>240</sup> Furthermore, in the initial report it is declared that “[f]rom childhood, young Myanmar girls are trained to undertake work in and around the house,”<sup>241</sup> thus confirming the acceptance of stereotypes attached to genders.

In the field of education, apart from the above-mentioned priority accorded to male children within the family, female students are openly discriminated against in the admission selection for

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<sup>236</sup> UNHCR, *Sexual and Gender-Based Violence...*, cit., p. 18: it can be noticed that denial of education for girls is both part of traditional harmful practices and socio-economic violence.

<sup>237</sup> CEDAW Myanmar Initial Report, pp. 14-19.

<sup>238</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, at [www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights\\_of\\_women.html](http://www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights_of_women.html).

<sup>239</sup> CEDAW Myanmar Initial Report, p. 17.

<sup>240</sup> New Humanity-FOCSIV Myanmar, *A Survey on Gender Issues...*, cit., p. 9; 100 *kyat* correspond to around 0.10 US\$.

<sup>241</sup> CEDAW Myanmar Initial Report, p. 16.

medical and engineering schools, since they are required to score higher grades than their male colleagues on the admission test.<sup>242</sup>

The effects of the repressive policy of the junta towards ethnic groups are particularly relevant in demonstrating that in reality only a small part of the population fully enjoys social and economic rights. Since the beginning of the military regime in 1962, the Tatmadaw has carried out a draconian plan aimed at undermining the support of the population to the ethnic insurgents: the “Four Cuts Policy” clearly targets civilian villagers, challenging their possibility of providing for their most basic needs. Given that women are responsible for all the duties related to the management of the household, a policy based on forced relocation, denial of access to fields, forced labour and the imposition of taxes has an extraordinary impact on their livelihoods. This impact is often multiplied by the absence of male relatives who are obliged to escape from the villages to avoid forced labour and summary executions, or who are imprisoned, missing, fighting with the insurgent groups, or dead.

Many women refugees from Burma have declared that the hard living conditions deriving from the junta’s repression are one of the main factors in their decision to flee the country and look for refuge in neighbouring States. For instance, it is estimated that during a massive operation of relocation of villages which took place in the Shan State between 1996 and 1997, around 150.000 people were forced to migrate to Thailand.<sup>243</sup> As will be analysed later, Shan are not considered by the Thai authorities as persons in need of temporary protection because the area they are fleeing from is a ceasefire zone, not an open-fight zone. Nonetheless, life in relocation sites is characterised by a lack of basic services and food, together with a continuous sense of vulnerability created by the proximity of Tatmadaw troops: “[t]he ‘push factors’ or determining conditions in Burma [for migration] include economic instability and extreme poverty, which exist throughout the country, but are particularly acute in area of forced displacement and under-developed rural border regions.”<sup>244</sup> Of course the entire displaced population is highly affected by the Burmese regime’s policy towards ethnic groups, but, because of their social role, women are particularly exposed to the consequences of the deprivations deriving from relocation. One of the biggest risks to which women are subjected in relocation sites is sexual violence committed by members of the armed forces. The analysis of the incidence of rape and

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<sup>242</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.

<sup>243</sup> Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit.. The total number of Shan villagers targeted by the relocation was 300000; the Shan were not the only ethnic group affected by campaign of relocation launched by the Tatmadaw in 1996: it is estimated that around 2800 ethnic villages were destroyed, affecting around one million villagers. See Thailand-Burma Border Consortium, *Programme Report: July to December 2005*, p. 64, at [www.ibiblio.org/obl/docs3/TBBCreport\\_Jul-Dec2005.pdf](http://www.ibiblio.org/obl/docs3/TBBCreport_Jul-Dec2005.pdf).

<sup>244</sup> Brenda Belak, *Gathering Strength...*, cit., p. 200.

other forms of sexual violence and their connection to the decision of leaving the country is the subject of the next section.



## 2. *The Use of Rape and Sexual Violence as a Strategy of War*

Many reports documenting the widespread and systematic use of rape and sexual violence by the Tatmadaw have been issued by both local and international NGOs.<sup>245</sup> The first report which received world-wide attention was “Licence to Rape,” drafted by the Shan Women’s Action Network (SWAN) and the Shan Human Rights Foundation (SHRF) in May 2002,<sup>246</sup> documenting the rape of several hundred girls and women in the Shan State in a nine-year period (between 1992 and 2001). Notwithstanding that the use of rape by the Burmese army against ethnic women was a well-known phenomenon before the publication of this report,<sup>247</sup> the international community paid unprecedented attention to it, while at the same time raising doubts about its objectivity. It was in fact claimed that a report written by an ethnic women’s group on the ordeal suffered by other ethnic women was likely to be biased and not credible.<sup>248</sup>

In any case, “Licence to Rape” had the consequence of starting a movement to increase the international awareness of the tragedy thousands of women in Burma were going through only because they were ethnic minorities and female.<sup>249</sup> In April 2003, another independent report on the extensive use of rape by the Tatmadaw was issued by an international NGO, Refugees International.<sup>250</sup> “No Safe Place” documents the rape of 43 women of different ethnic groups, confirming the findings of “Licence to Rape”. Additionally, 75% of the women interviewed during its drafting declared they knew someone who had been raped, representing a dramatic increase in the number of victims of sexual-related violence in the ethnic areas of the country.

One year after, the Karen Women’s Organization (KWO) published “Shattering Silences”,<sup>251</sup> which reported the rape of more than a hundred, mainly Karen, women between 1988 and 2004. More recently, the Women’s League of Burma (WLB) published “System of Impunity”,<sup>252</sup> recording twenty-six cases of rape which occurred in all areas inhabited by ethnic minorities between 2002 and 2004.

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<sup>245</sup> For a discussion about the different forms of sexual violence and their consideration by the international community, see Part One, Chapter Two, Paragraph Two of the present work.

<sup>246</sup> Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit.

<sup>247</sup> For example, in 1998 Earthrights International, an NGO focused on human rights and environment, published an extensive report linking the main characteristics of the Tatmadaw to its extensive use of rape; see Betsy Apple, *School for Rape...*, cit.

<sup>248</sup> Betsy Apple and Veronika Martin, *No Safe Place...*, cit., p. 16.

<sup>249</sup> It has to be noticed that even if ethnic women are the main targets of sexual violence committed by members of the army, also Burman women are subjected to it as a form of torture for their political affiliation.

<sup>250</sup> Betsy Apple and Veronika Martin, *No Safe Place...*, cit.

<sup>251</sup> The Karen Women’s Organization, *Shattering Silences...*, cit.

<sup>252</sup> The Women’s League of Burma, *System of Impunity...*, cit.

The SPDC denied the reliability of the reports, accusing the authors of operating against the efforts to bring democracy in the country;<sup>253</sup> at the same time, it opposed the request for independent investigations advanced by the United Nations in the person of the former Special Rapporteur on the Situation of Human Rights in Burma, Professor Pinheiro.<sup>254</sup> When Professor Pinheiro was finally allowed to visit the Shan State in August 2002, the population had been threatened in order to avoid any kind of accusation against the Burmese army.<sup>255</sup>

The SPDC denial of the use of rape as a strategy of war and declarations about the very low incidence of rape and sexual violence in general are in open contradiction with the stories recorded in the above-listed reports which clearly demonstrate that the episodes of sexual-related violence are part of a plan to physically and morally undermine ethnic communities, and not the consequence of isolated individual actions. This view is sustained by the fact that many of the reported accidents occurred while women were held as prisoners or obliged to serve as porters for the Tatmadaw; in addition, a great number of cases were either directly perpetrated or witnessed by officials. For instance, of the 173 incidents documented by “License to Rape”,<sup>256</sup> 85% were committed by officers;<sup>257</sup> half of the cases reported in “Shattering Silences” were as well committed by high-ranking commanders.<sup>258</sup> In some instances, victims/survivors were first raped by the officials and then by the soldiers under their command, thus emphasizing the use of sexual violence as a political strategy. In one of the stories related by “Shattering Silences,” the victim, a young woman belonging to the Wa ethnic group, was captured by a column of Tatmadaw soldiers and raped by the Commander in an army camp. After raping her, the Commander told his soldiers “[y]ou all must rape that woman, those who refuse to rape will be shot and killed.” The woman was then gang-raped by twenty soldiers and committed suicide upon release.<sup>259</sup>

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<sup>253</sup> “While the whole country is preoccupied in the building of a unified and peaceful nation some individuals and interest groups based in foreign countries are resorting to malicious allegations in the derailment of the positive steps being taken in the country. Their latest ploy, such as ‘rape used as weapon of war’ against the Kayin [Karen] women is not only absurd, but regretful to realize that nothing will stop [them] in their attempt to discredit the government and to derail its systematic transition to a sustainable democracy.” [sic]; cited in Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, at [www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights\\_of\\_women.html](http://www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/rights_of_women.html).

<sup>254</sup> Ibidem.

<sup>255</sup> Apparently, villagers had been warned not to report the human rights violations to any international organization that is allowed to visit the so-called “black areas”, as for example the International Committee of the Red Cross; see The Women’s League of Burma, *System of Impunity...*, cit., p. 7.

<sup>256</sup> The total number of incidents documented by the report is 625; of these, 173 are directly recounted by survivors or by eye-witnesses.

<sup>257</sup> Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit.

<sup>258</sup> The Karen Women’s Organization, *Shattering Silences...*, cit., pp. 60- 81.

<sup>259</sup> Ibidem, pp. 53-54.

The widespread use of rape and its approval by the Tatmadaw hierarchy is also confirmed by the testimonies of defectors who, even if they rarely admit to having committed the crime themselves, admit to having witnessed multiple incidents of sexual violence. Interviews with Tatmadaw defectors are among the sources used in the drafting of “School for Rape”,<sup>260</sup> one of the first reports to highlight the high incidence of sexual-related crimes in the Burmese ethnic war. The survey underlines that the intrinsic nature of rape in the civil conflict is not only the consequence of peculiar aspects of the country, such as its high militarization, the elevated status enjoyed by members of the Tatmadaw and the predominant gender inequality, but it is also the result of specific characteristics of the army which are fostered by the highest levels of its hierarchy. Tatmadaw soldiers are generally very young and either illiterate or with low levels of education; they are often forcibly recruited; training and discipline are based on cruelty more than on the will of providing soldiers with useful skills, and foster the belief in the inferiority of ethnic minorities, in particular ethnic women; daily living conditions are characterised by an overall lack of food, equipment and health supplies, together with complete isolation from external society; and alcohol and drugs abuse are widespread and not sanctioned. Moreover, not only soldiers, but also officials are constantly harassed by superiors.<sup>261</sup> These conditions, together with the strong emphasis put on masculinity, lead to the widespread and systematic commission of rape and sexual violence especially against women belonging to ethnic minorities: “[w]hen Tatmadaw soldiers and officers [...] have the opportunity to demonstrate their masculinity, they take it. This means they seek to dominate and violate those in more vulnerable circumstances: women. Brutality breeds brutality, and the prevalence of rape by brutalized Tatmadaw soldiers and officers is the predictable result of the cycle of violence played out between the military and the ethnic insurgents.”<sup>262</sup>

Episodes of sexual violence committed by Tatmadaw soldiers generally go unpunished. The social stigma attached to survivors of rape is often an insurmountable barrier which prevents victims from reporting incidents. In many of the recounted cases, women were scared about the reaction of relatives and partners and in more than one case the survivor was abandoned by the husband as a consequence of the sexual violence.<sup>263</sup> Even when women find the courage to report the violence to their relatives or to the village headmen, no actions are taken to punish the culprits. On the contrary, in

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<sup>260</sup> Betsy Apple, *School for Rape...*, cit.

<sup>261</sup> Ibidem, pp. 5-6.

<sup>262</sup> Ibidem, p. 6.

<sup>263</sup> See for example the case of Nar Lay in Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit., Appendix 1, p. 2.

many instances the victims and their relatives are arrested, tortured and sometimes even killed, or obliged to pay fines for having dishonoured a member of the Tatmadaw. Consequently, even in cases in which the survivor has the support of her community, the number of reports to the authorities is very low in order to avoid retaliations and further humiliations.<sup>264</sup> In the very few cases in which the authorities intervene to sanction the offenders, punishments are often limited to the payment of small amounts of money to the survivor or, if the incident resulted in the death of the victim, to her relatives. A case reported in “System of Impunity” is particularly significant in this regard. The victim was an eight-year old Pa’O girl who was raped by a member of the Tatmadaw while using the toilet of her house. When the relatives reported the case to the authorities, the “redress” they received amounted to “[...] 50,000 kyats (about US\$50), three sets of clothes, two pounds of dried cake and *a big teddy bear* [...]”.<sup>265</sup> As has already been pointed out,<sup>266</sup> rapes often result in forced marriages and pregnancies. Sexual violence is thus clearly part of a policy of ethnic cleansing or “Burmanisation” against minorities.<sup>267</sup>

The link between sexual violence and migration is evident in all the reports dealing with the use of sexual violence as a strategy of war. For example, in 13% of cases reported by “License to Rape”, survivors decided to move to Thailand after the incident, in some cases following the suggestion of relatives or village chiefs.<sup>268</sup> In other cases, rapes are the consequence of migration or forced relocation which renders women particularly vulnerable to different forms of violations of their human rights.<sup>269</sup> Instances of rapes and other atrocities occurring during flight are very common; for example, “No Safe Place” contains the account of a particularly atrocious case witnessed by a woman refugee while she was trying to reach the border with Thailand. Whilst the woman and her family were hiding in the jungle, a group of Burmese soldiers caught another family on the run, they killed their newborn child and, “[b]efore they shot and killed him, the soldiers instructed the husband to stand and watch while they raped the wife and killed her by stabbing her with a bamboo stick through her vagina and abdomen.”<sup>270</sup> The only survivor of the family was a six-year old girl who managed to hide from the soldiers. Many of the cases recorded by the reports under analysis end with the death of the victim and are often committed together with other forms of torture.

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<sup>264</sup> A general environment of impunity arises from many of the stories recorded by the reports.

<sup>265</sup> The Women’s League of Burma, *System of Impunity...*, cit., p. 15 (emphasis in the original text).

<sup>266</sup> See Paragraph 2.I of the present work.

<sup>267</sup> Betsy Apple and Veronika Martin, *No Safe Place...*, cit., p. 45.

<sup>268</sup> Shan Human Rights Foundation and Shan Women’s Action Network, *Licence to Rape*, cit., Appendix 1, p. 2.

<sup>269</sup> Betsy Apple and Veronika Martin, *No Safe Place...*, cit., p. 27.

<sup>270</sup> *Ibidem*, p. 28.

From the above, it is clear that, despite its official declarations, the Burmese junta makes a widespread and systematic use of rape and other forms of sexual violence in its policy of repression of non-Burman ethnic groups. Actually, as noted in “System of Impunity”, the majority of cases reported by the research drafted by the WLB took place between 2002 and 2004, exactly during the period in which the SPDC was vigorously denying its use of sexual violence as a weapon of war.

Women are raped while in their villages, houses and fields; while they are obliged to serve as porters or forced labourers; while detained in prisons and military camps; while forcibly relocated or on the run from the atrocities committed by the Tatmadaw. They are raped and tortured even when pregnant and the accounts of sexual violence and forced marriages of girl-children are countless. The reports analysed above are highly detailed, often containing the names and grades of the perpetrators. The exact number of victims/survivors of incidents of sexual violence is impossible to know, but it surely amounts to multiple thousands; the responsibility of the high ranks of the Tatmadaw, which is composed by the same persons ruling the country, is self-evident.

The accounts of rapes in Bosnia and Rwanda were one of the push factors which determined the intervention of the international community to stop the atrocities committed against the civilian population: notwithstanding the accuracy of the cases of sexual violence reported in the ethnic conflict in Burma, no action has been taken in order to stop them, thus reinforcing the isolation of the country and of its population.<sup>271</sup>

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<sup>271</sup> The case of Burma is not part of the United Nations Security Council agenda and it has been discussed in front of it only twice; in 2002, as a consequence of the issue of “License to Rape”, the General Assembly adopted a resolution in which it “express grave concern at [...] rapes and other forms of sexual violence carried out by members of the armed forces”, but still no action was taken to sanction the regime; the resolution is cited by Betsy Apple and Veronika Martin, *No Safe Place...*, cit., p. 9.

## CHAPTER 3: BURMESE FLEEING INTO THAILAND: REFUGEES OR ILLEGAL MIGRANTS?

### 1. *Burmese Refugees in Thailand: Some Statistical Data*

One of the effects of more than four decades of ethnic conflict and repression by the military regime in Burma is that a very high number of individuals left the country to seek refuge in bordering States. The highest number of Burmese refugees resides in Thailand, but all of Burma's neighbouring countries have received fluxes of people fleeing from the atrocities of the junta: in Bangladesh, the presence of refugees, mainly belonging to the Rhoingya ethnic group, is estimated to amount to more than 300.000;<sup>272</sup> in India the number of Chin refugees is around 60.000; and around 35.000 refugees belonging to the Rhoingya and Chin ethnic groups reside in Malaysia.<sup>273</sup>

It should be noted that none of these receiving countries, Thailand included, is party to the 1951 Convention on the Status of Refugees, so that often individuals leaving areas of open conflict or subject to the consequences of the tough policy of repression enacted from Rangoon towards minorities and political opponents are considered economic illegal immigrants, and are thus at high risk of forced repatriation and abuse from the authorities.

Thailand has been subjected to mass influxes of refugees from all South East Asia since the 1970s.<sup>274</sup> This is due both to its geographic position and to its political and economic stability with respect to its neighbouring countries. In addition, the Thai population growth rate is lower than that of

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<sup>272</sup> Rhoingya refugees in official camps in Bangladesh number approximately 20.000, but it is thought that between 100000 and 300.000 are living in the country without being registered; the situation of Rhoingya is particularly difficult since they are not considered by the junta as Burmese citizens. The first influx of Rhoingya arrived in Bangladesh in 1978 as a consequence of Ne Win's policy against "foreigners" residing within the borders of Burma. A second major flux took place between 1991 and 1992. In 1994, a mass repatriation was organized and since then no new arrival is allowed access to the two camps still in place. Overall, the condition of Rhoingya is highly critical: stateless and unwelcome by Bangladeshi authorities, they are subject to several violations of their human rights. See Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, at [www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/situation\\_of\\_refugees.html](http://www.ibiblio.org/obl/docs3/Burma%20Yearbook%202004/situation_of_refugees.html).

<sup>273</sup> Ibidem; there are no data on the number of refugees in China.

<sup>274</sup> On the South Eastern Asia refugee crisis during the 1970s and 1980s and the arrangements of the international community see Guy S. Goodwin-Gill, *The Refugee...*, cit., pp. 199-200.

the rest of the area and this, particularly during periods of intense economic development, has brought about a need for migrant labourers.<sup>275</sup>

The story of Burmese refugees' influxes into Thailand, as well as in the other neighbouring countries, is highly influenced by the developments of the civil war between Rangoon and the ethnic minorities. The massive flow of refugees from Burma into Thailand started in 1984. During the 1970s and the beginning of the 1980s, the Burmese side of the border with Thailand was under the *de facto* control of ethnic insurgents. Until 1984, the Tatmadaw started successful offensives only during the dry season, being obliged to withdraw from conquered positions when the monsoon season started,<sup>276</sup> with the result that refugees would then cross the border into Thailand when the Tatmadaw was conducting military offensives and come back into Burma as soon as the ethnic insurgents re-established their control of the border areas. In 1984, the Tatmadaw was finally able to maintain the positions conquered during the dry season, with the resulting establishment of around 10.000 refugees in Thailand. Starting in 1984, the control of the Burmese army of the areas bordering with Thailand increased and, in a ten-year period, the number of refugees grew to 80.000. In the meantime, the violent repression of the democratic movement in 1988 and 1990 caused the flight into Thailand of around 10.000 students and political opponents.<sup>277</sup> When Khun Sa, one of the leaders of the resistance in the Shan State, signed a ceasefire agreement with the central government in 1996, the Tatmadaw had the possibility of controlling the entire border with Thailand for the first time, which brought about an increase in the number of refugees to 115.000. The struggle of the junta against ethnic insurgents, particularly in the Shan State, took the form of massive relocations of villages beginning in 1996. It is estimated that around 300.000 individuals crossed the border as a consequence of the destruction of their villages, but the number is not certain since the majority of displaced people belong to the Shan ethnic group, whose members are not recognised as refugees by the Royal Thai Government (RTG). As a consequence of the policy of forced relocation, the number of refugees in Thailand reached 155.000 and estimates of the number of IDPs in Eastern Burma range beyond 500.000.<sup>278</sup>

The determination of the precise number of refugees from Burma residing in Thailand is complicated: as it is going to be analysed more thoroughly below, the fact that the RTG is not party to

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<sup>275</sup> W. Courtland Robinson, *Thailand: Background Paper on Human Rights, Refugees and Asylum Seekers*, p. II, at [www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=RSDCOI&id=415c0f414&page=publ](http://www.unhcr.org/cgi-bin/texis/vtx/publ/openssl.pdf?tbl=RSDCOI&id=415c0f414&page=publ).

<sup>276</sup> The dry season lasts from October to February, followed by the hot season until June and by the rainy season until September.

<sup>277</sup> An interesting testimony of the flight of students into Thailand following the 1988 events is given in Pascal Khoo Thwe, *The Land of the Green Ghosts...*, cit.

<sup>278</sup> Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 64-65.

the 1951 Convention creates uncertainty around the determination of refugee status; many of the persons who leave Burma out of a “well-founded fear of persecution” are regarded by Thai authorities as illegal immigrants and are thus not included in the figures on the number of refugees.

According to the last programme report of the Thai-Burma Border Consortium (TBBC),<sup>279</sup> an alliance of NGOs working within refugees’ communities in the border areas, the total refugee population at the end of December 2005 amounted to 155.212, while the figures of the previous six months made amount the total refugee caseload to 157.960.<sup>280</sup> As stated in the TBBC’s report, since the last headcount in the refugee camps took place in 1999, this decrease in reality “[...] reflects adjustments for movements in and out of camps over a long period of time rather than the actual change in the population during this 6-month period.”<sup>281</sup> Only in October 2005 did the RTG Ministry of Interior and UNHCR conclude a new registration process; moreover, since in this period the RTG did not allow new arrivals, it is highly possible that non-registered refugees were hiding in camps and that newcomers just replaced registered refugees who had left the camps for other opportunities.<sup>282</sup>

Refugees in Thailand belong mainly to the Karen, Karenni, Shan and Mon ethnic groups; Shan are not allowed permanence in the refugee camps, so they are not included within the official refugee population.

#### Refugee Demographics December 2005<sup>283</sup>

Group	Families	Adults*		Children		Under 5 years		Total
		Male	Female	Male	Female	Male	Female	
Karenni	4,397	7,340	6,148	2,466	2,790	1,826	1,763	22,333
Karen	23,018	40,636	38,485	12,370	11,478	8,697	8,372	120,038
Mon	2,289	3,685	3,935	1,514	1,401	648	692	11,875
Total	29,704	51,661	48,568	16,350	15,669	11,171	10,827	154,246

\* For Karen and Mon, this is over 12 years old, for Karenni over 14 years old.

There are nine refugee camps in the Thai-Burma border: according to the TBBC’s programme report, the population of the biggest camp, Mae La in the Thai province of Tak, is 46.534.<sup>284</sup>

As a consequence of the combination between the retreat of ethnic insurgents from the border areas, with whom refugees engaged in black market activities, and a stricter policy of the RTG which does not allow refugees to leave the camp premises to find jobs as daily workers or to cultivate small

<sup>279</sup> Thailand-Burma Border Consortium, *Programme Report...*, cit.

<sup>280</sup> Ibidem, p. 2.

<sup>281</sup> Ibidem.

<sup>282</sup> Ibidem.

<sup>283</sup> Ibidem, p. 70; data have been provided by the Karen, Mon and Karenni Committees.

<sup>284</sup> Ibidem, p. 3; the UNHCR made amount the population of Mae La camp to 33029 in May 2005: see UNHCR, *Myanmar Thailand Border, Refugee Population by Gender as at end May 2005*, 2005, at [www.unhcr.org](http://www.unhcr.org).



plots of land, refugees in camps have to rely almost completely on the aid of international agencies. These two factors have necessitated the increase in the percentage of food supplies provided by international agencies to refugees from the 50% of 1984 to 100% in the mid-1990s.<sup>285</sup> Since the RTG considers that refugees are only temporarily present in the country, building permanent structures to shelter them is not permitted. Houses are built of bamboo or wood and easily damaged during the rainy season. Besides, the RTG put restrictions on the possibility for refugees to cut or to buy bamboo, allegedly to reduce their environmental impact; consequently relief agencies also must provide building material to repair old shelters and build new ones when needed.<sup>286</sup>

In general, life conditions in camps are not too different from the ones of traditional villages in ethnic areas of Burma, even if the prolonged character of their stay has a negative impact on the coping capacity of refugees;<sup>287</sup> at the same time, the RTG's attitude towards the management of the sites is aimed at avoiding the so-called "pull factor", which would render the livelihood in camps attractive for people fleeing from Burma.<sup>288</sup> Two of the sites, Mae La Oon and Tham Hin, are in particularly worrisome conditions; the first was built in order to relocate the dwellers of another refugee camp situated close to the Salween National Park. The relocation was concluded in 2004, but around 1200 refugees preferred to go back to Burma since the new location was only four kilometres away from the border, and therefore highly exposed to incursions of the Burmese army.<sup>289</sup> Besides, Mae La Oon camp is built in an area highly susceptible to flooding.<sup>290</sup> Tham Hin camp is highly overcrowded and living conditions are considered to be below international standards.<sup>291</sup> Sadako Ogata, the former High Commissioner for Refugees, commented on the conditions of the camp during a visit in 2000 saying "I have not seen such a crowded [situation], shelter-wise very bad. I was quite shocked."<sup>292</sup>

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<sup>285</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.; Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 70.

<sup>286</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.; Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 74.

<sup>287</sup> Some of the refugees have been living in camps for more than 20 years; UNHCR, *Global Appeal 2006*, p. 285, at [www.unhcr.org](http://www.unhcr.org).

<sup>288</sup> Brenda Belak, *Gathering Strength...*, cit., p. 203.

<sup>289</sup> Incursions of the Tatmadaw in border camps constitute a very relevant problem for the relations between Thailand and Burma. The Tatmadaw's operations against refugees are mainly aimed at obliging them to go back to Burma since the army needs the support of villagers for food and forced labour. Besides, insurgents often infiltrate refugee camps. See Ananda Rajah, *Burma: Protracted Conflict...*, cit., p. 16.

<sup>290</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.; Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 6.

<sup>291</sup> Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 6.

<sup>292</sup> Cited in Brenda Belak, *Gathering Strength...*, cit., p. 203; the United States government recently agreed on the resettlement of all the population of Tham Hin camp, see Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 6.

Refugees from Burma are also present in urban areas of Thailand. Urban refugees, mainly political opponents and Karen who do not feel safe enough in border camps, are even more exposed to the risk of being forcible repatriation by RTG authorities since they are reached by relief agencies with greater difficulty. Moreover, the RTG ordered the relocation of all urban refugees to border camps in 2004 in an attempt to limit the activities of Burmese political opponents.<sup>293</sup> The high vulnerability of persons seeking for refuge in Thailand depends on the RTG's policy towards them and will be analysed in the next section.

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<sup>293</sup> See below.

## **2. Refugees from Burma: a brief overview of the “pushing factors”**

The reasons why hundreds of thousands of people are leaving Burma seeking refuge in Thailand and other neighbouring countries may appear clear from the above analysis of the serious human rights violations perpetrated by the Rangoon government towards political opponents and ethnic minorities. Nevertheless, a brief description of the main “pushing factors” determining the flight from the country can be useful in order to increase the understanding of the shortcomings of and the dangers entailed by the RTG’s policy toward displaced persons from Burma.

Since 1988, the entry of migrants from Burma into Thailand has been constantly growing with a partial stop after the crackdowns on undocumented immigrants at the end of the 1990s. As will be better analysed in the following section, most of the persons escaping from Burma who are defined as illegal immigrants by the RTG’s authorities are in reality fleeing from the effects of the decade-long civil conflict between the central government and ethnic insurgents.

Usually, refugees are displaced within their own country even before crossing the borders: the flight into Thailand usually is the consequence of the very harsh conditions characterizing internal displacement and is regarded as a last resort. The estimated number of IDPs in Eastern Shan State, the area directly bordering with Thailand, amounts to 540.000 of which around 340.000 are living in resettlement areas under the control of ceasefire groups. The rest is either hiding from the SPDC in remote areas of the country or living in the relocation sites established by the Burmese government.<sup>294</sup>

From interviews conducted with Burmese living in Thailand it clearly shows that, even if the first reason determining the migration is usually considered to be the search for better economic conditions, all of them are leaving an existence characterised by abuses and human rights violations perpetrated by the Burmese army and government.<sup>295</sup>

Forced relocation of villages has a paramount impact on the livelihood of thousands of people; with no land to cultivate, often the only available option is internal displacement followed by the crossing of the border with Thailand.<sup>296</sup> Forced labour and portering are also very relevant pushing factors determining the flight from the country: in addition to preventing the victims from providing for their basic needs by cultivating their lands or performing any other kind of paid job, army porters and forced labourers are submitted to a long list of additional human rights violations which in many cases

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<sup>294</sup> Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 67.

<sup>295</sup> Therese M. Caouette and Mark E. Pack, *Pushing Past the Definition: Migration from Burma to Thailand*, Refugees International and Open Society Institute, December 2002, p. 15, at [www.refugeesinternational.org/files/3074\\_file\\_burma.pdf?PHPSESSID=5ce00f92779c166324e1d](http://www.refugeesinternational.org/files/3074_file_burma.pdf?PHPSESSID=5ce00f92779c166324e1d).

<sup>296</sup> *Ibidem*, pp. 15-18.

can lead to permanent physical disabilities or death.<sup>297</sup> Villagers are then often obliged to pay very high taxes in an economic context already characterised by a total lack of development.<sup>298</sup>

All the above-mentioned pushing factors ultimately depend on the ongoing and prolonged war between the junta and the ethnic factions that mainly affects the vulnerable civilian population. Apart from depriving villagers of the necessary means to survive, the repression policy enacted by the SPDC is based on the infliction of severe violations of human rights which clearly create a sense of fear and vulnerability within the population. Notwithstanding the numerous reports documenting these violations, the majority of persons fleeing from Burma are considered by the RTG as illegal immigrants and are highly exposed to the risk of repatriation and further human rights abuses by Thai authorities, employers and members of the host communities. After the abuses suffered in their home-country, these risks are considered bearable. As a Shan migrant declared “[t]he suffering here is not the same as in Burma. If an employer makes us work, he gives us the wages too. If the police catch us, he will not kill us and also feed us food. But in our country, we not only worked for the military, they also asked us for more. [...] They held guns and we have only hands. [...]”.<sup>299</sup>

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<sup>297</sup> Ibidem, pp. 18-20.

<sup>298</sup> Ibidem, pp. 23-26.

<sup>299</sup> Ibidem, p. 29.

### **3. The Royal Thai Government's Policy towards Refugees from Burma**

Thailand has been a receiving country of refugee influxes since the 1970s, but it has never ratified either the 1951 Convention or its 1967 Protocol; in addition, no domestic law is in place for the determination of refugee status. Nonetheless, the RTG has an obligation to respect the principle of *non-refoulement* which can be considered as international customary law, as well as the human rights instruments which it has ratified since the 1990s.<sup>300</sup> Notwithstanding the international obligations falling upon the government, the official policy toward refugees from Burma is not always based on the respect of basic human rights.

The RTG's attitude towards refugees from Burma has been influenced by relations between the two countries, which, for a long time, have been characterised by a constant tension on the border due to both the Tatmadaw's incursions into Thailand against refugees and insurgents and the trafficking of drugs, in particular methamphetamines, produced along the border.<sup>301</sup>

Since the first Burmese incursions against the camps hosting Karen began in 1995, the RTG has been under pressure to deal with the security issues deriving from the presence of refugees, both in terms of national sovereignty and of protection of the refugees. The chaos at the border was, of course, unwelcome by the Thai authorities and the repatriation of refugees has been long considered the solution to these problems. Nonetheless, it was clear to RTG authorities that if the situation in Burma did not improve, refugees could not be safely repatriated.<sup>302</sup>

The RTG's policy towards refugees from Burma changed when Prime Minister Thaksin Shinawatra, a charismatic former policeman and communication tycoon, took power in 2001 with a populist programme based on the fight against corruption and promises of economic growth.<sup>303</sup> The attempt to improve the relations with the Burmese junta had the effect of making the RTG's attitude

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<sup>300</sup> The RTG is party to six of the major human rights conventions, namely the Convention on the Elimination of all Forms of Discrimination against Women (1985), the Convention of the Rights of the Child (1992), the International Covenant on Civil and Political Rights (1996), the International Covenant on Economic, Social and Cultural Rights (1999), and the International Convention on the Elimination of All Forms of Racial Discrimination (2003); for the list of treaties ratified by the RTG see [www.ohchr.org/English/countries/th/index.htm](http://www.ohchr.org/English/countries/th/index.htm).

<sup>301</sup> The fight against drug trafficking and consumption has been an important part of Thai Prime Minister Thaksin's policy which has been criticised by human rights defenders for its excesses; see Ananda Rajah, *Burma: Protracted Conflict...*, cit., p. 18; W. Courtland Robinson, *Thailand: Background Paper...*, cit., pp. 7-9.

<sup>302</sup> Hazel Lang, *The Repatriation Predicament of Burmese Refugees in Thailand: a Preliminary Analysis*, Australian National University, Canberra, p. 6, at [www.unhcr.org/epau](http://www.unhcr.org/epau).

<sup>303</sup> Thailand held elections at the beginning of April 2006, three years before the end of the legislation after weeks of rallies against Mr Thaksin based on allegations of corruption. The results have been rendered invalid by the Constitutional Court and new elections have been planned for October. For information about Thai politics see the BBC News website (<http://news.bbc.co.uk/2/hi/asia-pacific/default.stm>); see also website of the Thai newspaper "The Nation" at [www.nationmultimedia.com/index.php](http://www.nationmultimedia.com/index.php).

toward refugees and migrant workers coming from their troubled neighbour sensibly harsher.<sup>304</sup> Clear evidence of this change was the intolerance toward Burmese political opponents groups operating from Thailand, which, starting from 2003, brought about the arrest of several activists, and was subsequently followed by the decision to relocate all urban refugees into border camps.<sup>305</sup>

The flow of refugees from Burma began in 1984 and has never stopped. In principle, the policy of the RTG towards persons fleeing from the SLORC/SPDC repression of democratic movements and ethnic groups has been to recognise them as persons in need of temporary protection on humanitarian grounds. This protection and the entry to the camps along the border has nonetheless been granted only to “persons fleeing fighting,” and not to persons fleeing from the effects of fighting or from the gross human rights violations inflicted by the Tatmadaw.<sup>306</sup> One of the consequences of this narrow definition is that some ethnic groups are denied access to refugee camps and considered as illegal migrants, and thus face a high risk of forced repatriation.

From this point of view, the situation of Shan refugees is particularly worrying. Since the mid-1990s the Tatmadaw began an exceptionally intense strategy of repression targeting civilians in central Shan State to cut off any kind of support to the SSA troops. As has already been stated, the consequence of this policy was the relocation and destruction of hundreds of villages and the subsequent flight of hundreds of thousands of Shan into Thailand. It is estimated that around 300.000 ethnic Shan sought refuge into their neighbouring country as a result of the severe application of the “Four Cut Policy”. Since the Shan have been traditionally present in Thailand as seasonal workers, the RTG refuses to recognise them as persons in need of temporary protection even if it is clear that they are fleeing from widespread and gross human rights violations. Another reason why Shan are denied access on humanitarian grounds is related to the high rate of drugs that are produced in the Eastern Shan State; it is also a consequence of the policy against drug trafficking enacted by Mr Thaksin’s government. Shan are thus considered as illegal migrants with no access to refugee camps<sup>307</sup> or, consequently, to the aid of relief agencies.<sup>308</sup>

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<sup>304</sup> Human Rights Watch, *Out of Sight, Out of Mind: Thai Policy toward Burmese Refugees*, February 2004, p. 8, at <http://hrw.org/reports/2004/thailand0204/>.

<sup>305</sup> Ibidem, p. 9.

<sup>306</sup> Ibidem, p. 10.

<sup>307</sup> In 2002, thanks to the pressure of human rights organizations, some Shan fleeing from intense fighting going on in the Burmese side of the border were allowed to build shelters inside Thailand; see Shan Women’s Action Network, *Shan Refugees: Dispelling the Myths*, September 2003, p. 7, at [www.shanwomen.org](http://www.shanwomen.org).

<sup>308</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.; with regard to Shan refugees see Shan Women’s Action Network, *Shan Refugees...*, cit.

People fleeing from Burma are divided by the RTG into three categories. This categorization is based on the “pushing factors” determining their displacement, but in reality the differences between the members of each group are not overly evident, considering the general environment of repression prevalent in Burma is the main cause of dislocation.

As has been said, only “persons fleeing fighting” are considered “persons in need of temporary protection”. This category is composed mainly of ethnic Karen and Karenni who are allowed permanence in the nine refugee camps of the border areas. The process to determine if a person can be considered as “temporarily displaced” was set up only in 1998. Before the institution of the Provincial Admission Boards (PABs), admission to camps was based entirely on the discretion of the borders authorities. Nonetheless, even after the creation of a standardized screening process, instances of *refoulement* of persons refused by the PABs or not yet interviewed are numerous.<sup>309</sup>

The PABs stopped meeting in 2001, with the consequent blocking of the admission process of new arrivals. The RTG announced that they would resume working in 2004, substituting the process administered by UNHCR for the determination of Person of Concern (POC) status.<sup>310</sup> The role of UNHCR in determining the status of individual applicants as POC had, in fact, been strongly criticised by Prime Minister Thaksin in 2003, when some Burmese political opponents organized a demonstration in Bangkok to denounce an attack organized by the Tatmadaw against Daw Aung San Suu Kyi and some of her supporters in Upper Burma.<sup>311</sup> On that occasion, Mr Thaksin declared that UNHCR was undermining Thai sovereignty by allowing POCs to freely circulate in the country, in particular in the urban areas. Consequently, it was decided that no Burmese refugee was to be allowed in urban centres and that UNHCR had to stop the determination process. Applications could start to be processed again at the beginning of 2004, but the UNHCR role was limited to the referral of cases to the PABs.<sup>312</sup> The agreement reached between the RTG and UNHCR about the re-opening of the determination status by the PABs also contains an enlargement of the very narrow definition employed in the past. Apparently the RTG agreed to also include within the category of persons in need of temporary protection those “fleeing from persecution or for other reasons”. However, persons falling within this category would have to be resettled to third countries. This development is considered by

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<sup>309</sup> Therese M. Caouette and Mark E. Pack, *Pushing Past the Definition: Migration from Burma to Thailand*, Refugees International and Open Society Institute, December 2002, p. 8, at [www.refugeesinternational.org/files/3074\\_file\\_burma.pdf?PHPSESSID=5ce00f92779c166324e1d](http://www.refugeesinternational.org/files/3074_file_burma.pdf?PHPSESSID=5ce00f92779c166324e1d).

<sup>310</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.

<sup>311</sup> On the so-called “Black Friday” see BBC News, *Burma’s “Black Friday”*, 16 June, 2003, at <http://news.bbc.co.uk/1/hi/world/asia-pacific/2993196.stm>.

<sup>312</sup> Human Rights Documentation Unit, *Human Rights Yearbook 2004: Burma*, cit.

UNHCR “[...] an important step towards the establishment of a national asylum structure in a non-Convention environment”.<sup>313</sup>

Burmese refugees in urban settings usually belong to the second category of people fleeing in search of refuge, that of political dissidents and students who had to leave the country after the events of 1988. The majority of them were allowed to go through the POC determination process of UNHCR and be provided with financial assistance and documents proving their status. Nonetheless, many POCs were, and still are, subjected to mistreatment by Thai authorities.<sup>314</sup> At the beginning of the 1990s the RTG instituted a “safe house” in Maneelay for Burmese political opponents where they could wait for resettlement into third countries; however, the majority of them preferred not to enter the centre, mainly because it would have been a clear admission of their participation in the democratic movement, with the consequent exposure of their relatives in Burma to reprisals from the junta. Additionally, it was feared that the creation of a centre would have made it much easier for the RTG to repatriate refugees as soon as the political situation made it necessary. The crackdown on Burmese migrants which followed the seizure of the Burmese Embassy by some students in 1999 made the life of POCs outside the centre even more difficult than before, determining the entry of many of them, especially if unregistered, into the Maneelay centre in order to receive at least a minimum protection. When the centre closed in 2001, the majority of registered refugees had been resettled into third countries; those who entered Maneelay without being registered allegedly returned to urban centres, facing again the risk of being considered illegal immigrants.<sup>315</sup>

Another change in the RTG’s policy with respect to Burmese political opponents is the introduction of the requirement of a visa for persons with a Burmese passport. This measure was introduced in 2002 and makes it very difficult for Burmese citizens to obtain the necessary documents to enter Thailand.<sup>316</sup>

The RTG’s decision not to allow Burmese refugees to live in urban centres causes serious problems in terms of safety for political dissidents, as well as for the camps population. The main concern is that the presence of activists in the border sites could increase the conflicts between the different factions fighting against the central government of Rangoon, moreover exposing all the refugees to attacks of the Tatmadaw across the border. Further, life in camps is extremely secluded and

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<sup>313</sup> UNHCR, *Global Appeal 2006*, p. 285, at [www.unhcr.org](http://www.unhcr.org).

<sup>314</sup> As declared by a Burman former student in Bangkok, the POC status and the possession of documents issued by UNHCR do not provide protection against arrest and deportation. See the interview in Human Rights Watch, *Out of Sight, Out of Mind...*, cit., p. 27.

<sup>315</sup> Therese M. Caouette and Mark E. Pack, *Pushing Past the Definition...*, cit., p. 11.

<sup>316</sup> Human Rights Watch, *Out of Sight, Out of Mind...*, cit., p. 31.



this prevents dissidents from continuing their political activities.<sup>317</sup> Even if living in urban centres, in particular in Bangkok, poses serious problems to refugees, and exposes them to a high risk of being deported back to Burma, many persons fleeing from the repression of the junta prefer to live in a urban environment where there are more possibilities to find jobs and have access to health care and education.<sup>318</sup>

The last and numerically biggest category of persons crossing the border between Thailand and Burma is composed by “migrants”. This broad category includes people who left Burma in search of protection from the abuses of the Tatmadaw as well as persons looking for better economic opportunities. Often migrants are not only illegally residing in Thailand, they are also working in illegal sectors of the economy such as sex work, begging and drug trafficking. The demand for adolescents and female migrants, two categories which are particularly vulnerable to abuses, is worryingly increasing.<sup>319</sup>

In the 1980s the entry of migrants from Burma and other countries in the area was welcomed by Thailand since the Kingdom was undergoing a period of sustained economic development and consequently needed unskilled and cheap labour. Thai policy towards migrant workers from Burma radically changed with the economic crisis of 1997, when the government decided that the work done by immigrants should instead go to Thai nationals. What the RTG did not take into account was that Thais were not available for unskilled, and therefore low paying, work. This obliged the Thai government to allow the registration of migrant workers, but this process was generally too expensive for both the employee and the employer.<sup>320</sup>

In any event, the process of forced repatriation of those Burmese found without valid documentation sped up during the last period of the 1990s and is still going on. Deportation to Burma is both formal and informal and the only way to avoid it, although not always effective, is to bribe the Thai authorities. In reality, the difference between formal and informal deportation is almost imperceptible and, whatever the case may be, expulsion to Burma frequently entails the breach of the customary law principle of *non-refoulement*.

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<sup>317</sup> Ibidem, p. 20.

<sup>318</sup> Ibidem, pp. 26-27.

<sup>319</sup> Therese M. Caouette and Mark E. Pack, *Pushing Past the Definition...*, cit., p. 14.

<sup>320</sup> Ibidem, pp. 12-13; recently the registration of migrant workers allowed one million immigrants from Burma to enter the legal fold. This is considered as a very positive step since it allows a diminishing of the stress posed on asylum procedures, meanwhile ensuring protection to a bigger number of people from Burma. See UNHCR, *Global Appeal 2006*, cit., p. 285. In any case, other organizations express doubts about the effectiveness of the registration process: see Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 6.

According to Human Rights Watch, in 2004 Thai authorities were expelling around 10.000 Burmese migrants each month.<sup>321</sup> Among the deportees, some were under the mandate of UNHCR as POCs.<sup>322</sup> The “informal” procedures consist in the arrest by Thai authorities followed by the deportation to an unofficial border crossing point. In the event of an informal deportation it is easy for the deportee to bribe the authorities and go back to Thailand immediately after having crossed the border.

After the signature of an agreement between the SPDC and the RTG in 2003, Burma became directly involved in the process of deportation. According to the memorandum, 400 Burmese have to be deported every month. After crossing the border, deportees are held in the Myawaddy centre where they are subjected to political screening and forced medical examinations. Since the centre is run by the Burmese MI, consequences for asylum seekers involved in the democratic movement can be particularly severe; at any rate, given that leaving the country without valid documents is a crime under Burmese law,<sup>323</sup> all the deportees risk being detained. In some cases migrants are brought to the Immigration Detention Centre in Bangkok or, in cases of political activists, in the Special Detention Centre, prior to deportation. In both instances the only way of gaining freedom is to be deported to Burma, and facing the risks of being subjected to arrest by the SPDC authorities.<sup>324</sup>

An important recent development to which the RTG agreed changing its previous position opens the way to the achievement of durable solutions for Burmese refugees: the possibility of resettlement to third countries.<sup>325</sup> The total number of refugees who can be resettled amounts to around 13.000 and only persons who were registered during the re-registration process of 2004-5 are allowed to apply. Generally speaking, the possibility of resettlement opens the opportunity of starting a new life to many displaced persons who sometimes lived for decades in camps; on the other hand not all refugees are available to leave Thailand since they still hope to return to their country.<sup>326</sup>

As has been analysed, the RTG’s policy toward refugees from Burma has been subjected to many changes which have made it, notwithstanding the latest positive developments, highly unpredictable. People fleeing from a volatile, albeit not totally unsafe, setting such as the one prevalent

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<sup>321</sup> Human Rights Watch, *Out of Sight, Out of Mind...*, cit., p. 12.

<sup>322</sup> Ibidem.

<sup>323</sup> “SPDC’s Law 367/120-(b)(1) Burmese citizens who illegally want to go and work in Thailand will be sentenced to a seven-year prison term”, cited in Therese M. Caouette and Mark E. Pack, *Pushing Past the Definition...*, cit., p. 27.

<sup>324</sup> Ibidem, pp. 12-15.

<sup>325</sup> UNHCR, *Global Appeal 2006*, cit., p. 285; countries which gave their availability for resettlement during 2005 were the United States, Australia, New Zealand, Norway, Sweden, The Netherlands, Denmark, Canada, UK and Finland: see Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 4.

<sup>326</sup> Ibidem, pp. 4-5.

in Burma are in need of protection from the host country as well as from the international community, a protection that is difficult to provide within a non-Convention environment. The risk of being forcibly repatriated in violation of the principle of *non-refoulement* to a country where abuses of human rights and international humanitarian law are committed on a widespread and systematic way makes the life of refugees in Thailand unsustainably uncertain and dangerous. As will be analysed in the next part of the present work, this has an outstanding negative impact on women refugees' livelihood in Thailand.

#### **4. Sexual and Gender-based Violence against Women Refugees in Thailand**

There are approximately sixty thousand women refugees from Burma living in the nine camps on the Thai side of the border out of a total refugee population of around 140.000, meaning that the ratio of male to female is 51:49.<sup>327</sup> Usually, refugees come from Burma in family units and they have a tendency to recreate their village community in the border sites. This suggests that the traditional gender roles predominant in the home-country are reproduced in displaced settings: men are the head of household while women are in charge of taking care of their families.<sup>328</sup>

Women fleeing from Burma are very often survivors of SGBV, particularly in the form of rape and other sexual assaults. Unfortunately, the risk of being subjected to further abuses in the host country is very high, thus fostering a widespread sense of vulnerability within the female refugee population. Perpetrators of SGBV against women refugees from Burma “[...] include Thai soldiers, officials and villagers but most are fellow refugees”.<sup>329</sup> Girls are the main target since they are perceived as more vulnerable and unable to advance complaints to receive a redress for the violence they are subjected to. The lack of reporting is a common characteristic of episodes of SGBV disregarding the age of the survivor and is a consequence of a strict patriarchal society which faults the victims for the violence done to them. The social stigma attached to cases of rape for instance often has the consequence of obliging the survivor to marry the rapist in order to preserve her honour and the honour of her family.<sup>330</sup> The low rate of reported cases does not depend too much on the provenance of the perpetrator: when the culprit is one of the Thai authorities, complaints are uncommon for fear of retaliation; but when the perpetrator is someone belonging to the same community as the survivor, reports are even less common since the victim does not want to put her fellow refugees in danger in an environment already perceived as unsympathetic.<sup>331</sup>

As has been pointed out above, SGBV is both a reason determining flight and a consequence of displacement. Out of fear of suffering violence again, hundreds of thousands of women leave Burma

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<sup>327</sup> According to other estimates which take into account the total Burmese population in Thailand, not just one based in camps, the percentage of women amounts to 60-80%; see Women Commission for Refugee Women and Children, *If Not Now, When? Situation in Burma and Among Burmese Refugees in Thailand*, April 2001, p. 53, at [www.womenscommission.org](http://www.womenscommission.org).

<sup>328</sup> Female Headed Households amount to the 6% of the total; Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 82.

<sup>329</sup> Bill van Esven and Kristen Young, *Addressing Sexual and Gender Based Violence*, in “Forced Migration Review”, November 2005, p. 67, at [www.fmreview.org/FMRpdfs/FMR24/FMR2440.pdf](http://www.fmreview.org/FMRpdfs/FMR24/FMR2440.pdf).

<sup>330</sup> Ibidem.

<sup>331</sup> Brenda Belak, *Gathering Strength...*, cit., p. 70.

after having been subjected to sexual violence and other severe violations of their rights; while on the run, women are particularly vulnerable to further episodes of SGBV at the hand of Thai border authorities in particular in the form of opportunistic rape and trafficking. When the perpetrator is an official the possibility of receiving redress is very low. Accounts of rape of women whilst crossing the border with Thailand or being forcibly repatriated are countless. A case which received attention from the Thai media can serve as an example of the ordeal to which thousands of women and girls fleeing from Burma are subjected. During the RTG's crackdown against migrants in November 1999, Burmese workers were denied entry into the country and sent back to the Burmese side of the border. During one of these operations, fifteen women were raped by Tatmadaw soldiers. In the same period, several accounts of rape by Thai Border Patrol Police of women trying to enter Thailand were reported.<sup>332</sup>

Inside the camps, women remain at high risk of sexual violence perpetrated by the very persons who should be protecting them. In some of the interviews made for the drafting of "Gathering Strength", women refugees expressed the feeling that Thai men do not respect them as much as they do with women belonging to their community, thus adding a racial character to SGBV.<sup>333</sup> Instances of sexual violence against women refugees working outside the camps are very common as well. In these cases the perpetrators usually are the employers.<sup>334</sup>

With regard to the way male leaders in camps address instances of SGBV, it can be said that their reaction is generally of indifference. When the perpetrator is a member of the refugee community, camps leaders prefer not to involve Thai authorities and try to arrange reparation with the survivor's family. On the other hand, Thai authorities prefer not to get involved in cases taking place within refugee communities, leaving the justice system of the camps, which is often arbitrary, to make its own way.<sup>335</sup>

Following a pattern common to refugee settings all over the world,<sup>336</sup> within refugee, internally displaced or relocated populations in Thailand the incidence of domestic violence increases. Women expressed the opinion that "[...] the incidence of domestic violence was sometimes higher in refugee camps than in their former communities [...]",<sup>337</sup> highlighting the alienation of husbands and the consequent increase in alcohol and drug abuse as factors influencing this rise. Women refugees also

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<sup>332</sup> Article appeared in the "Bangkok Post" on 8 November 1999, cited by Brenda Belak, *Gathering Strength...*, cit., p. 69.

<sup>333</sup> Ibidem.

<sup>334</sup> Ibidem, p. 67.

<sup>335</sup> Bill van Esven and Kristen Young, *Addressing Sexual and Gender Based Violence*, cit., p. 67.

<sup>336</sup> See Part 1, Chapter 3, Paragraph 2 of the present work.

<sup>337</sup> Brenda Belak, *Gathering Strength...*, cit., p. 81.

expressed the opinion that the inclusion of men in projects addressing domestic violence is of paramount importance in order to reduce its incidence in the camps.<sup>338</sup>

Women's organizations play a prominent role in trying to increase the prevention and response to cases of SGBV within the camps. In the first place, being part of the community, it is easier for survivors to trust them; secondly, UNHCR is not allowed by the Thai government to have a constant presence in the camps, so that its ability to enact effective programmes based on its policy and guidelines on SGBV is seriously undermined. Nonetheless, since 2002 UNHCR Thailand has started to implement programmes aimed at reducing the impact of SGBV by raising awareness within refugee communities and Thai authorities and setting up response mechanisms coherent with international standards, thus remedying to lack of specific SGBV programmes, a problem which had been underlined, for instance, by the WCRWC in a 2001 report.<sup>339</sup> Part of these programmes is based on the creation of committees composed by both male and female refugees whose role is to report SGBV cases to UNHCR and refer survivors to medical and counselling services. The importance of the independence of these committees is self-evident since male camp leaders do not show the necessary sensitivity to address SGBV incidents;<sup>340</sup> further, women are still underrepresented in refugees' decision-making bodies, constituting only 22% and 10% of, respectively, Camps Committees and Section Committees,<sup>341</sup> a lack of representation that clearly influences the possibility of mainstreaming gender related issues into the management of the camps.

A particularly important role is plaid by the Mae Tao clinic situated in Mae Sot area. The clinic was opened by a Karen woman who fled with hundreds of other people after the 1988 events. Dr. Cynthia Maung started operating with the help of a few volunteers and is now the director of a clinic serving approximately 200.000 persons on both sides of the border. In addition to providing health services, the Mae Tao clinic also runs a primary school and a boarding school for orphans, organizes trainings for health workers and traditional birth attendants and affords support to the activities of ethnic women's associations working with refugees. The role of the Mae Tao clinic with respect to the wellbeing of women refugees and migrant workers from Burma in the area of Mae Sot is of outstanding importance, in particular with regard to the reproductive health services it provides.<sup>342</sup> Unfortunately, the Mae Tao clinic also suffered from the increasingly strict policy of the RTG toward

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<sup>338</sup> Ibidem.

<sup>339</sup> Women Commission for Refugee Women and Children, *If Not Now, When?*, cit., pp. 55-58.

<sup>340</sup> Bill van Esven and Kristen Young, *Addressing Sexual and Gender Based Violence*, cit., p. 67.

<sup>341</sup> Thailand-Burma Border Consortium, *Programme Report...*, cit., p. 82.

<sup>342</sup> Women's Commission for Refugee Women and Children, *Nowhere to Run: Ethnic Burmese Living in Refugee-like Circumstances in Thailand*, February 2000, at [www.womenscommission.org](http://www.womenscommission.org)

Burmese migrants when in 2003 Dr. Cynthia Maung was informed that the Burmese working in the clinic would not be able to renew their work permits.<sup>343</sup>

In 2005 UNHCR used Thailand as a pilot project for its Age, Gender and Diversity Mainstreaming process.<sup>344</sup> One of the outcomes of the year-long implementation was the institution of Multi Functional Teams aimed at interacting with the different sectors of the refugee communities to elaborate projects responding to their most pressing needs.<sup>345</sup> A very important development introduced by UNHCR during the re-registration process of 2005 was the individual registration of women refugees, which is one of the main instruments to ensure women's access to aid and documentation. With regard to the distribution of relief items, in particular sanitary supplies, women's refugees committees have been entrusted with the process of the identification of beneficiaries and management systems.<sup>346</sup>

With regard to the general livelihood of women refugees in camps, the prohibition for sites-dwellers to leave the camp premises in order to increase the income of their families has a very high impact on women's lives. If women are found out of the camps without authorization they risk the repatriation to Burma; at the same time, women are preferred to men by factories owners and for domestic work. Women working outside the camps are extremely vulnerable to abuses by employers and Thai authorities, and highly exposed to the risk of being trafficked or employed in exploitative jobs.<sup>347</sup> In addition to the risks women can encounter if working outside the camps, the refugee community itself reveals prejudices against them based on the assumption that they have been involved in sex work. In general, when women are subjected to SGBV while outside the compounds, the community considers it as a natural consequence of having left the safe environment of the camps.<sup>348</sup>

The problem of enabling women to earn some money in the secluded camp environment is addressed by women's organizations with the delivery of vocational training mainly aimed at the production and selling of traditional handicraft. This, for instance, is one of the activities implemented by WEAVE, an NGO active in refugee camps at the border with Thailand.<sup>349</sup>

The importance of these activities has been recently acknowledged by the RTG as a way of reducing the impact of the protracted camp situation which has had the consequence of seriously

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<sup>343</sup> Human Rights Watch, *Out of Sight, Out of Mind...*, cit., p. 18.

<sup>344</sup> For an overview of the contents of the pilot projects, see part 1, Chapter 3, Paragraph 3 of the present work.

<sup>345</sup> Ibidem, p. 21.

<sup>346</sup> UNHCR, *Country Operation Plans, Thailand 2006*, 2005, pp. 6-7, at [www.unhcr.org](http://www.unhcr.org).

<sup>347</sup> Brenda Belak, *Gathering Strength...*, cit., p. 203.

<sup>348</sup> Ibidem, p. 204.

<sup>349</sup> For more information about the activities of this NGO see the website at [www.weave-women.org](http://www.weave-women.org).

undermining the psychological wellbeing of the community. One of the effects of this situation directly affecting women is the increase in cases of domestic violence. Moreover, malnutrition in camps reached worryingly high levels due to the poorness of the diet and the impossibility for refugees to buy additional food without earning a salary. UNHCR considers this new position of the Thai government as a very important step to better the livelihood of refugees in the border camps.<sup>350</sup>

At present it is impossible to evaluate the impact of these projects established by UNHCR and other organizations for women refugees in Thailand. The new standpoint of the RTG towards resettlement and refugees' rights could have important consequences on women searching for refuge from the violent repression they suffer in Burma. At the same time, Thailand should access the 1951 Convention and its Protocol in order to enact a refugee policy within an international framework. Moreover, SGBV should be considered as a ground to grant asylum to survivors. Not only would this increase the level of protection accorded to women refugees, it would also contribute to cast a light on the widespread and systematic violations of their rights perpetrated in a climate of total impunity by the Burmese army.

When the SPDC delegation at the CEDAW Committee was asked about the conditions of women refugees, the answer was “[t]here are actually no refugee camps on our side”.<sup>351</sup> The Burmese junta's continuous denial of the allegations of violations of women's rights that have been analysed in the present work based on detailed reports drafted by both international and local NGOs is nothing but propaganda. Ultimately, the only way to really improve the conditions of women refugees from Burma is the development of a genuine democratic system within their country, together with the elaboration of a consistent strategy aimed at overcoming the gender stereotypes which undermine women's freedom and possibility of development.

The international community shares the responsibility of protecting refugees with the host country, in this case Thailand. At the same time, it also has the responsibility of sustaining the struggle of the people of Burma to bring their government back to democracy after decades of military rule. Unfortunately, the situation of Burma is not part of the agenda of the United Nations Security Council and so far the sanctions that some States have applied to the regime have failed to contribute to an improvement in the livelihood of the population of the South Eastern Asian country. Political and economic interests still play a major role in the attitude of the international community towards one of the worst dictatorships of the world: in the meantime, the women of Burma suffer countless violations

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<sup>350</sup> UNHCR, *Country Operation Plans* ..., cit., p. 3.

<sup>351</sup> Cited in Brenda Belak, *Gathering Strength*..., cit., p. 66.



of their basic rights with an almost total lack of interest from the community of States. Ultimately, everyone is responsible for their sufferings.

## CONCLUSIONS

*“The only real prison is fear, and the only real freedom is freedom from fear”  
-Daw Aung San Suu Kyi-*

Notwithstanding the position sustained by the Burmese government, women in Burma do not enjoy their basic rights and gender equality is still far from having been achieved. As has been demonstrated, the policy of the junta not only fails to contribute to the enhancement of women's position in society, but, on the contrary, it perpetuates stereotypes of the traditional role of women in the family and society.

This unbalanced relation between genders is, of course, exacerbated by the situation of ongoing ethnic conflict characterising more than half of the country. Even in ceasefire areas the massive presence of Tatmadaw troops creates unbearable living conditions for the civil population, in particular as a consequence of the application of the “Four Cuts Policy” which directly targets villagers of ethnic areas who are forcibly relocated from their homes, used as forced labourers, denied access to the most basic services, tortured, killed and, in general, subjected to intolerable levels of psychological violence. One of the consequences of this policy is the massive internal and cross-border displacement of civilians left with no other option in order to survive.

The Burmese government is party to the Four Geneva Conventions of which Common Article 3 imposes the prohibition of inhumane treatment of civilians during non-international conflicts.<sup>352</sup> Within the acts prohibited by Common Article 3, particularly relevant with regard to women is the ruling out of acts amounting to torture and cruel treatment and of outrages upon personal dignity. Rangoon is also party to the Convention on the Elimination of Every Form of Discrimination Against Women and to the Convention on the Right of the Child,<sup>353</sup> in addition to being obliged to respect the norms of customary international law, of which the prohibition of inhumane treatments and slavery are a fundamental element. The prohibition of the well-known and widespread slavery-like practices in Burma is further supported by the ratification by the military junta of the ILO Forced Labour Convention of 1930.<sup>354</sup>

Ethnic women are subjected to violations of their basic rights both because of their gender and because of their race. The reports analysed above show that SGBV against women is both widespread

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<sup>352</sup> See the website of the International Committee of the Red Cross at [www.icrc.org](http://www.icrc.org).

<sup>353</sup> See the website of the United Nations Office of the High Commissioner for Human Rights at <http://www.ohchr.org/english/countries/>.

<sup>354</sup> ILO Forced Labour Convention (No 29), 1930, at [www.ilo.org](http://www.ilo.org).

and systematic, thus amounting to a crime against humanity.<sup>355</sup> Furthermore, the high incidence of violence against women perpetrated by States officials clearly amounts to persecution in the sense of Article 1A(2) of the 1951 Convention on the Status of Refugees.

None of the States bordering Burma is party to the 1951 Convention, a factor that makes the life of people seeking refuge from the repression of the Burmese junta extremely uncertain. In the case of women refugees this means that often they are not only not granted the necessary protection and assistance deriving from being obliged to leave their home-country upon persecution and being survivors/victims of SGBV, they are also very often submitted to further violence by the host State authorities and community, as well as their own community. The risks of being subjected to sexual violence, domestic violence, harmful traditional practices and trafficking always increase as a consequence of displacement, but the likeliness for women to be exposed to these different forms of SGBV is further boosted in non-Convention environments.

The case of Thailand is exemplary of the treatment to which Burmese refugees are subjected; the RTG's policy towards people fleeing from the atrocities of the Tatmadaw in fact is highly volatile and based more on political calculations than on humanitarian grounds. As has been seen, the RTG considers only persons that are fleeing from areas of open conflict as being in need of temporary protection: this excludes those persons who are leaving Burma because of the massive human rights violations committed by the Tatmadaw in areas which are under ceasefire agreements from the access to refugee camps and protection. They are considered to be illegal immigrants and hence are highly exposed to forced repatriation. This is the case, for instance, of the ethnic Shan, one of the groups that have suffered the most as a consequence of the high number of villages forcibly relocated and destroyed as part of the strategy of ethnic cleansing enacted by the Tatmadaw. Women from Burma who are found without legal documents are at particularly high risk of being subjected to SGBV by Thai authorities and, if forcibly repatriated, by the Burmese troops.

Even if Thailand is not party to the 1951 Convention, it is still obliged to respect customary international law. With regard to international refugee law, the RTG is bound to follow one of its main principles, establishing the *non-refoulement* of persons at risk of being subjected to persecution upon repatriation to their home country.<sup>356</sup> Instances of informal return to Burma by the Thai authorities are countless, including the return of the so-called "mandate refugees" who have been provided with

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<sup>355</sup> See Article 7.1 of the Statute of the International Criminal Court at [http://www.icc-cpi.int/library/about/officialjournal/Rome\\_Statute\\_120704-EN.pdf](http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf).

<sup>356</sup> Convention on the Status of Refugees, art. 33.

documents by UNHCR attesting their status. This practice is openly in contrast with customary international law and should be sanctioned by the international community.

As has been analysed above, UNHCR is implementing projects aimed at diminishing the incidence of SGBV within refugee communities in Thailand in particular from 2002. Since the prevention of violence against women is strictly connected to a change in the attitude of the population toward the social roles attached to genders an evaluation of their impact remains for the time being premature. Nonetheless, the fact that UNHCR is not allowed to have a constant presence in the camps threatens to undermine their effectiveness.

Notwithstanding the developments in the RTG's policy with respect to refugees from Burma, its access to the 1951 Convention undoubtedly would better the livelihood of the hundreds of thousands of people who have been obliged to leave their home country because of the open persecution perpetrated by the Burmese army. Moreover, Thailand should apply a wider criteria to define persons in need of temporary protection.

With regard to Burma, the only possible solution to decades of civil conflict is the hand over of the political power to the recognised leader of the democratic movement and winner of the Nobel Peace Prize, Daw Aung San Suu Kyi. The institution of a true democracy and the establishment of effective policies aimed at enhancing the role of women within Burmese society are the only elements which could really contribute to a decrease in the incidence of SGBV in this Asian country.

Ultimately, the international community should take a clear position with respect to the military junta in Burma, disregarding the economic and political considerations which are silencing the legitimate claims of hundreds of thousands of women victims of atrocious and well-documented violations of their most basic human rights.

## **ANNEXES**

## ANNEX 1: GENDER-RELATED PERSECUTION AND THE DETERMINATION OF REFUGEE STATUS

As has been analysed in Chapter 3, one of the problems affecting women refugees derives from the absence of references to gender as a possible ground for persecution in the terms expressed by the 1951 Convention. Moreover, often women arriving in the country of asylum with their male relatives are interviewed only summarily or not at all for the determination of their status, showing a biased approach of officials to link persecution to political activities and consequently to men. Further, when interviewed, women may be subjected to non-gender sensitive procedures, which can seriously affect the likeliness of them entirely reporting their experience, in particular when the persecution they suffered took the form of rape or other sexual assaults.<sup>357</sup>

In its 1985 Conclusion on Women Refugees and International Protection, UNHCR's Executive Committee "[r]ecognized that States, in the exercise of their sovereignty, are free to adopt the interpretation that women asylum-seekers who face harsh or inhumane treatment due to their having transgressed the social mores of the society in which they live may be considered as a 'particular social group' within the meaning of Article 1A(2) of the 1951 United Nations Refugee Convention."<sup>358</sup>

Among the Conclusions issued by the Executive Committee on the subject of gender-based persecution, particularly important is the 1993 Conclusion on Refugee Protection and Sexual Violence<sup>359</sup> in which the Committee "[s]trongly condemns persecution through sexual violence, which not only constitutes a gross violation of human rights, as well as, when committed in the context of armed conflict, a grave breach of humanitarian law, but is also a particularly serious offence to human dignity,"<sup>360</sup> urging States to grant equal access to refugee men and women to the procedures of status determination and to the issue of personal documents,<sup>361</sup> as well as to develop "[...] appropriate guidelines on women asylum-seekers, in recognition of the fact that women refugees often experience persecution differently from refugee men."<sup>362</sup>

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<sup>357</sup> UNHCR, *Guidelines on the Protection of Refugee Women*, cit., paragraphs 53-62.

<sup>358</sup> Executive Committee of the High Commissioner's Programme, *Refugee Women and International Protection*, No. 39 (XXXVI), 1985, paragraph k), at [www.unhcr.org](http://www.unhcr.org).

<sup>359</sup> Executive Committee of the High Commissioner's Programme, *Refugee Protection and Sexual Violence*, No. 73, (XLIV), 1993, at [www.unhcr.org](http://www.unhcr.org).

<sup>360</sup> Ibidem, paragraph a).

<sup>361</sup> Ibidem, paragraph c).

<sup>362</sup> Ibidem, paragraph e).

In 2002, UNHCR issued the “Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees”,<sup>363</sup> which were included in the SGBV Guidelines released one year after by the agency. The aim of this document was to “[...] provide legal interpretative guidance for governments, legal practitioners, decision-makers and the judiciary, as well as UNHCR staff carrying out refugee status determination in the field.”<sup>364</sup> The Gender-Related Persecution Guidelines recognise that a gender-sensitive approach to refugee status determination is relatively recent and its development has been influenced by the parallel development of human rights law, together with the jurisprudence of international criminal courts. It is further noted that it is not sufficient to be a woman to be entitled to refugee status since “[...] the refugee claimant must establish that he or she has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>365</sup> According to these guidelines then, claims of refugee status for gender-based persecution always must be linked to the five grounds listed by Article 1A(2) of the 1951 Convention, which, if interpreted properly, also cover cases of persecution based on the gender of the claimant.<sup>366</sup> Apart from a detailed analysis of the elements that must be taken into account while considering claims based on gender-related persecution, such as the difference between mere discrimination and persecution and the gender-sensitive interpretation of the Convention grounds of persecution, the Gender-Related Persecution Guidelines list also some procedural arrangements that should be applied in order to create an adequate environment for the claimant to describe his or her conditions, taking into account that often survivors of SGBV, in particular women, can feel uncomfortable in speaking about their experience or can suffer from Post-Traumatic Syndrome Disorder.<sup>367</sup>

At the municipal level, some countries began adopting guidelines on gender-related persecution in the 1990s. One of the first countries to move in the direction indicated by UNHCR was Canada after the public opinion movement arising as a consequence of the Immigration and Refugee Board’s sentence in the Nada case. The case was related to the application for asylum of a Saudi Arabian

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<sup>363</sup> UNHCR, *Guidelines on International Protection: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees* (hereinafter Gender-Related Persecution Guidelines), May 2002, in “International Journal of Refugee Law”, vol 14, No. 2/3, 2002.

<sup>364</sup> Ibidem, p. 457.

<sup>365</sup> Ibidem, p. 459.

<sup>366</sup> Ibidem; it is further noticed that “[...] there is no need to add an additional ground to the 1951 Convention definition” related to gender, ibidem, p. 460. Even if it is beyond doubt that a gender-sensitive approach to the 1951 Convention can grant the determination of refugee status on grounds of gender-based persecution, the explicit inclusion of “gender” in Article 1A(2) would have an important symbolic, as well as legal, value; the effect could be the same as the inclusion of sexual crimes within crimes against humanity in the Statute of the International Criminal Court which underlined the commitment of the international community not to accept the perpetuation of those crimes.

<sup>367</sup> Ibidem, pp. 467-470.

woman who feared persecution for her denial to comply with the imposed behavioural codes in her country of origin: the Immigration and Refugee Board (IRB) refused her application stating that, to avoid being subjected to persecution, she simply had to respect the law. The sentence fostered a strong public opinion movement which had the effects of granting Nada permanent residence for humanitarian reasons and pushing the IRB to adopt the Gender Guidelines in March 1993.<sup>368</sup> These guidelines, updated three years later to take into account the evolution based on case law, did not represent a change in Canadian asylum policy, but they provided a framework to assess claims put forward by women independently by their male relatives, as well as established gender-sensitive procedures of assessment.<sup>369</sup>

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<sup>368</sup> Carolyn Patty Blum and Nancy Kelly, *The Protection of Women Refugees*, cit., p. 222.

<sup>369</sup> Ibidem; similar gender guidelines have been adopted, among others, by Australia, New Zealand, the United States and the United Kingdom: see Hannah Pearce, *An Examination of the International Understanding of Political Rape...*, cit., p. 553.

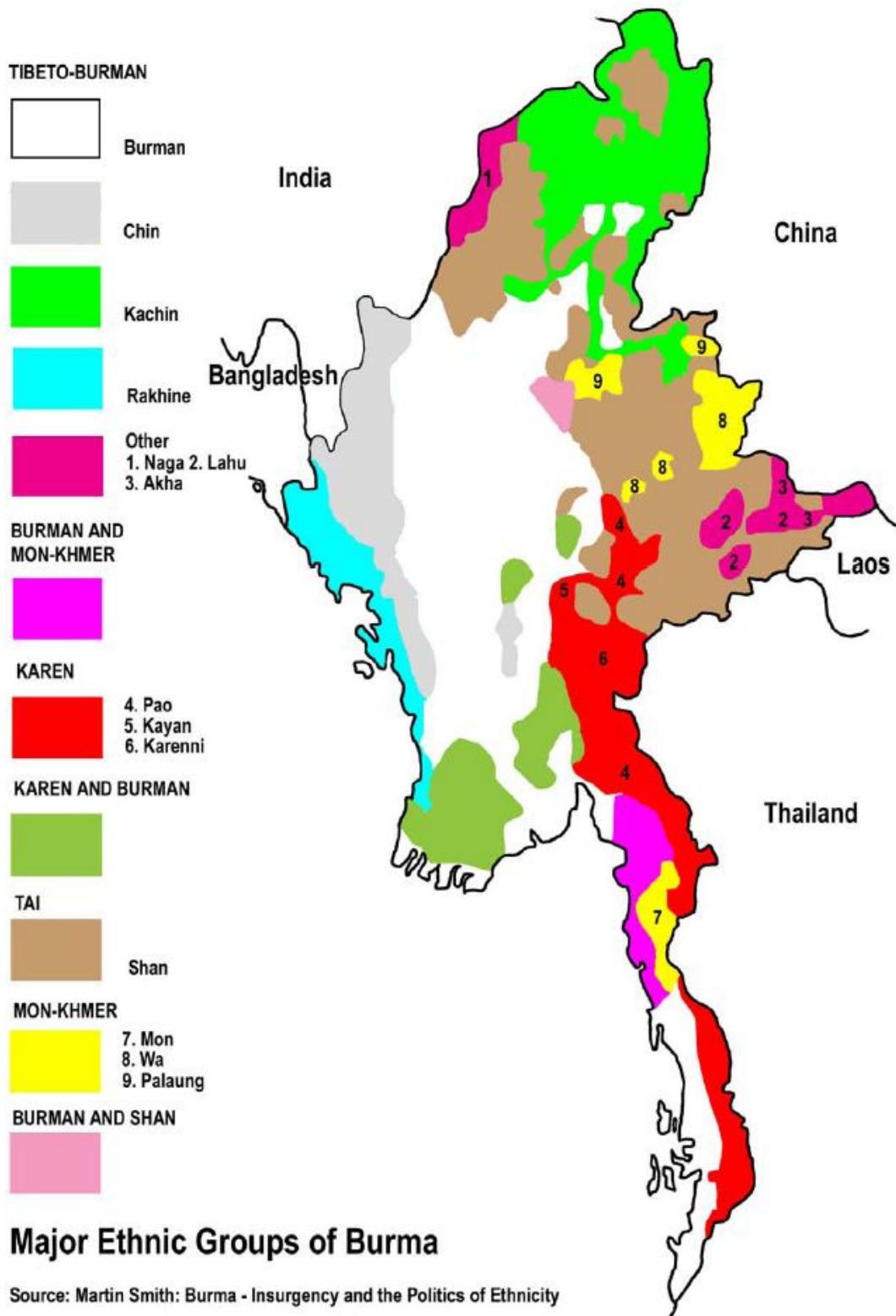


## ANNEX 2: MAP OF BURMA



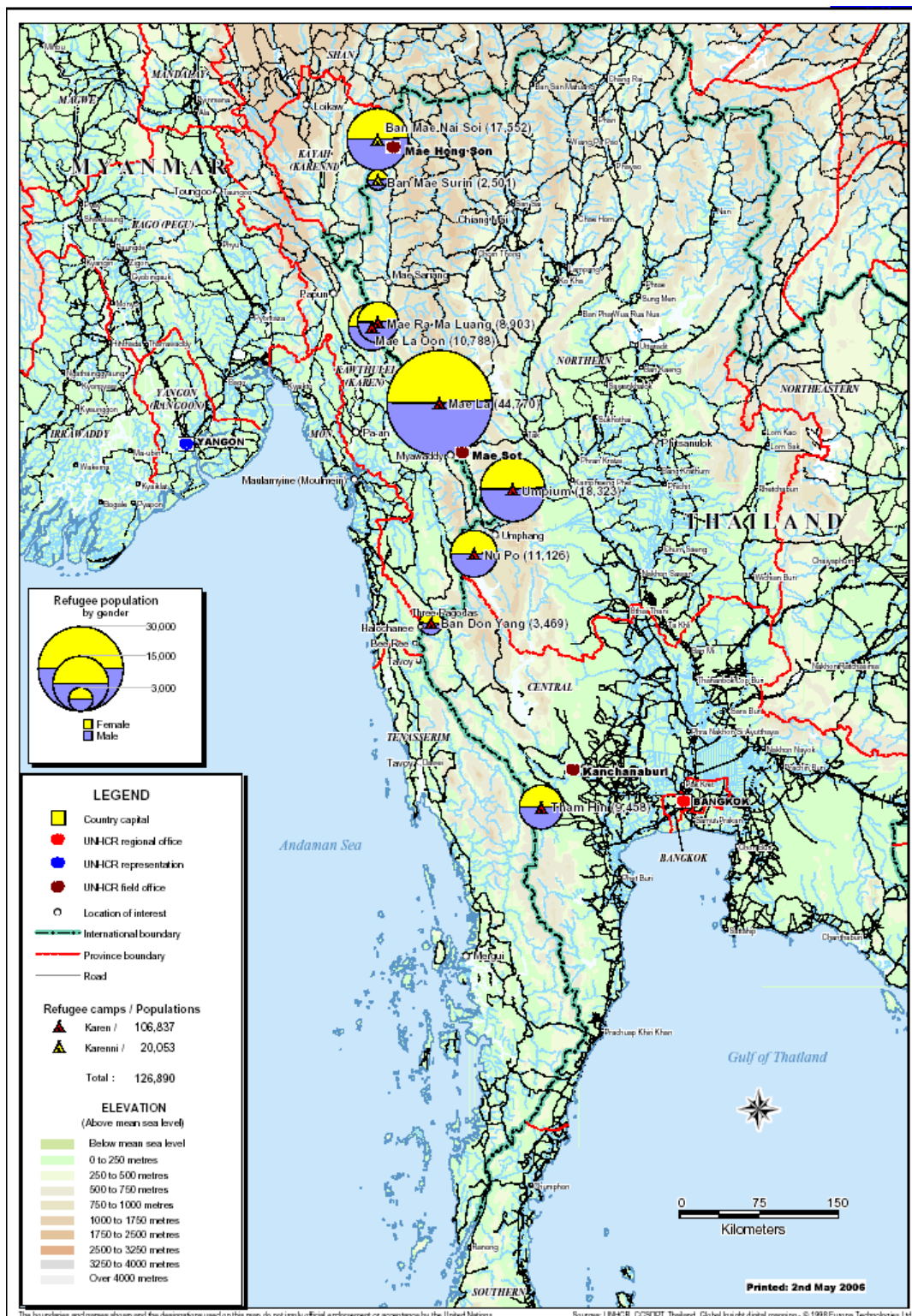
Source: United Nations Department of Peacekeeping Operations, Cartographic Session, at [www.un.org/Depts/Cartographic/map/profile/Myanmar.pdf](http://www.un.org/Depts/Cartographic/map/profile/Myanmar.pdf)

## ANNEX 3: MAJOR ETHNIC GROUPS OF BURMA



Source: Thailand-Burma Border Consortium, Thailand-Burma Border Consortium, *Programme Report: July to December 2005*, p. 9, at [www.ibiblio.org/obl/docs3/TBBCreport\\_Jul-Dec2005.pdf](http://www.ibiblio.org/obl/docs3/TBBCreport_Jul-Dec2005.pdf)

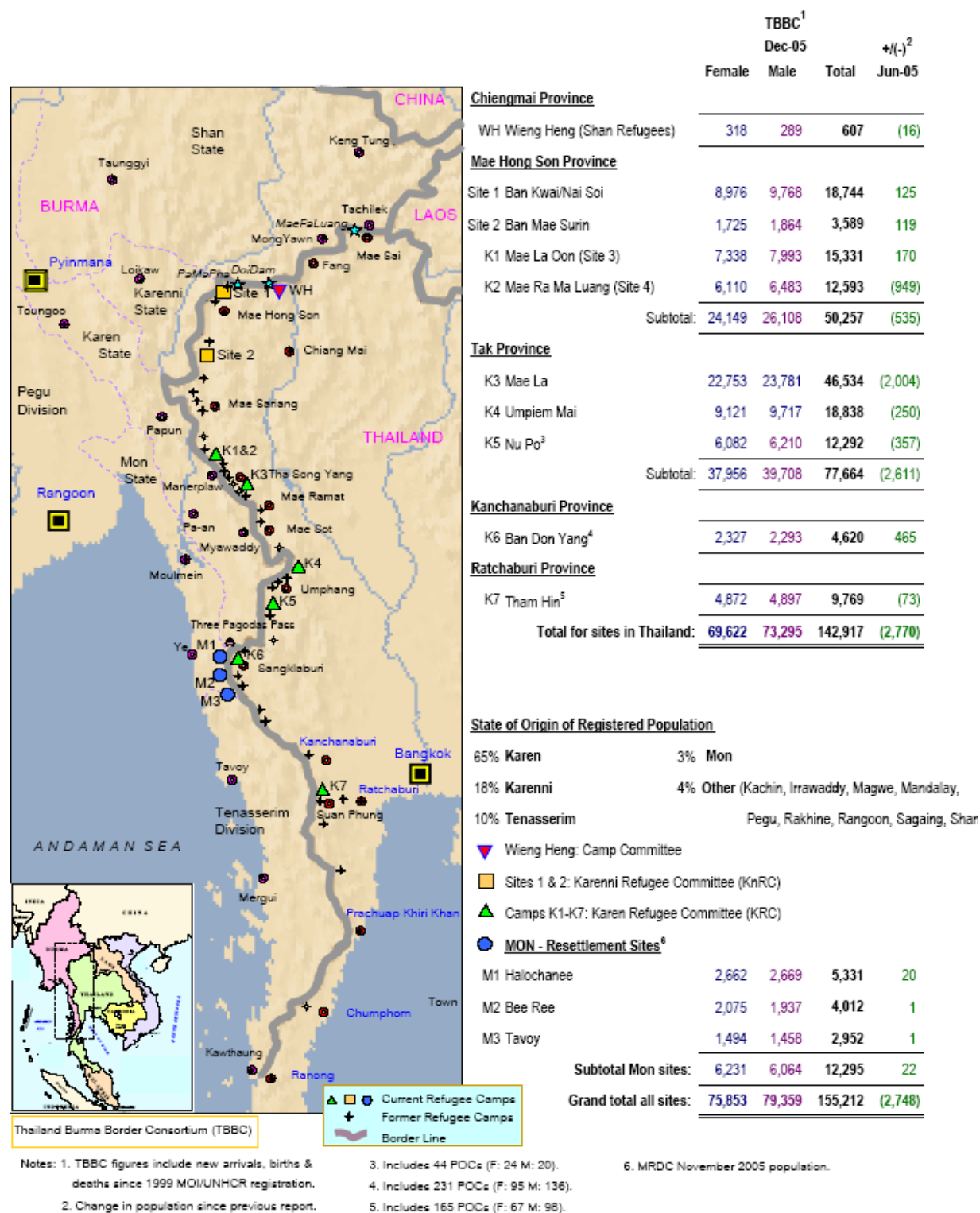
## ANNEX 4: THAI-BURMA BORDER, REFUGEE POPULATION BY GENDER, MAY 2005



Source: UNHCR, Myanmar Thailand Border, Refugee Population by Gender as at the end of March 2006, at [www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3da150087](http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3da150087)

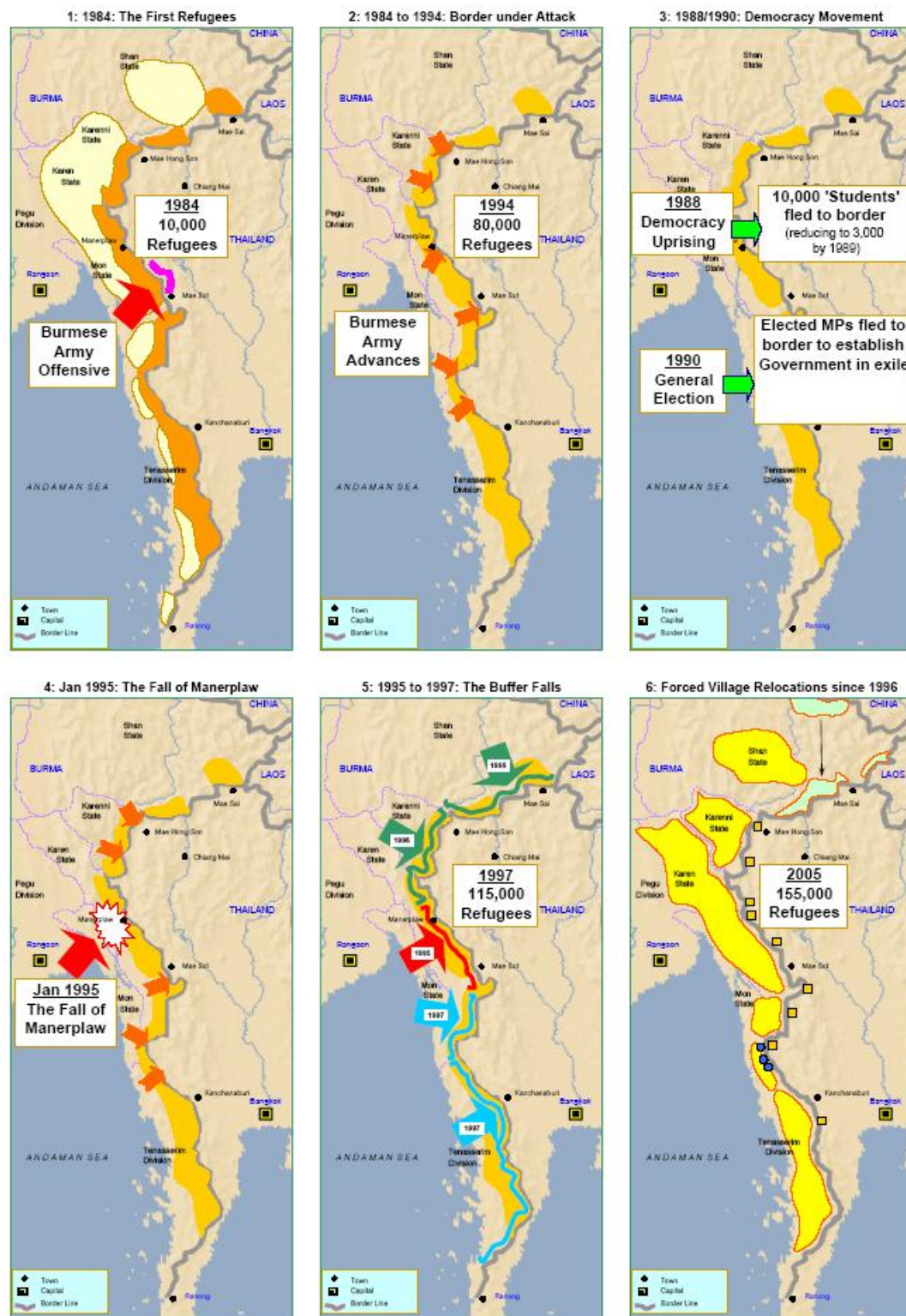


## ANNEX 5: BURMESE BORDER REFUGEE SITES WITH POPULATION FIGURES, DECEMBER 2005



Source: Thailand-Burma Border Consortium, Thailand-Burma Border Consortium, *Programme Report: July to December 2005*, p. 13, at [www.ibiblio.org/obl/docs3/TBBCreport\\_Jul-Dec2005.pdf](http://www.ibiblio.org/obl/docs3/TBBCreport_Jul-Dec2005.pdf)

## ANNEX 6: HISTORY OF THE BURMESE BORDER SITUATION, 1984-2005



Source: Thailand-Burma Border Consortium, Thailand-Burma Border Consortium, *Programme Report: July to December 2005*, p. 75, at [www.ibiblio.org/obl/docs3/TBBCreport\\_Jul-Dec2005.pdf](http://www.ibiblio.org/obl/docs3/TBBCreport_Jul-Dec2005.pdf)

## ANNEX 7: LIST OF CEASEFIRES GROUPS

Main Cease-fire Organisations (in order of agreement)					
No	Name of organisation	Abb:	Leader	Date	Region
1	Myanmar National Democracy Alliance Army (Kokang)	MNDAA	Phone Kyar Shin	21 Mar 1989	Special Region-1, Northern Shan State
2	United Wa State Army (Myanmar National Solidarity Party)	UWSA	Pao Yuchang & Kyauk Nyi Lai	9 May 1989	Special Region-2, Shan State
3	National Democratic Alliance Army (Shan/Akha Armed National Groups)	NDAA	Sai Lin & Lin Ming Xian	30 June 1989	Special Region-4, Eastern Shan State
4	Shan State Army (Shan State Progress Party)	SSA	Col. Loi Mao	2 Sept 1989	Special Region-3, Shan State
5	New Democratic Army (Kachin)	NDA-K	Sakhone Ting Ying	15 Dec 1989	Special Region-1, North-East Kachin State
6	Kachin Defence Army (KIO 4th Brigade)	KDA	Mahtu Naw	13 Jan 1991	Special Region-5, Northern Shan State
7	Pa-O National Organisation	PNO	Aung Kham Hti	11 April 1991	Special Region-6, Southern Shan State
8	Palaung State Liberation Army	PSLA	Aik Mone	21 April 1991	Special Region-7, Northern Shan State
9	Kayan National Guard (breakaway group from KNLP)	KNG	Gabriel Byan & Htay Ko	27 Feb 1992	Special Region-1, Kayah(Karenni) State
10	Kachin Independence Organization	KIO	Lamung Tu Jai	1 Oct 1993	Special Region-2, Kachin State
11	Karenni State Nationalities Peoples' Liberation Front	KNPLF	Sandar & Htun Kyaw	9 May 1994	Special Region-2, Kayah(Karenni) State
12	Kayan New Land Party	KNLP	Shwe Aye	26 July 1994	Special Region-3, Kayah(Karenni) State
13	Shan State Nationalities Peoples' Liberation Organization	SSNPLO	Ta Kalei	9 Oct 1994	Southern Shan State
14	New Mon State Party	NMSP	Nai Shwe Kyin	29 June 1995	Mon State

Other Cease-fire Forces (not always announced or listed by government)					
No	Name of organisation	Abb:	Leader	Date	Region
1	Democratic Karen Buddhist Army	DKBA	Tha Htoo Kyaw	Dec 1994	Karen State
2	Shan State National Army, aka SSA-Central	SSNA	Gun Yawd	1995	Nothern Shan State

3	Mong Tai Army	MTA	Khun Sa	2 Jan 1996	Southern Shan State
4	Karenni National Defence Army (splinter faction from KNPP)	N/A	Lee Rey	1996	Kayah(Karenni) State
5	Karen Peace Force (ex-KNU 16th Battalion)	N/A	Saw Tha Mu Hei	24 Feb 1997	Karen State
6	Rakhine State All National Races Solidarity Party (CPB Arakan State)	N/A	Saw Tun Oo	6 April 1997	Arakan(Rakhine) State
7	Mon Mergui Army (splinter faction from NMSP)	N/A	Ong Suik Heang	1997	N/A
8	KNU Special Region group (Toungoo)	N/A	Saw Farrey Moe	8 Nov 1997	Karen State

Source: “The Irrawaddy”, at [www.irrawaddy.org/res/ceasefire.html](http://www.irrawaddy.org/res/ceasefire.html)

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